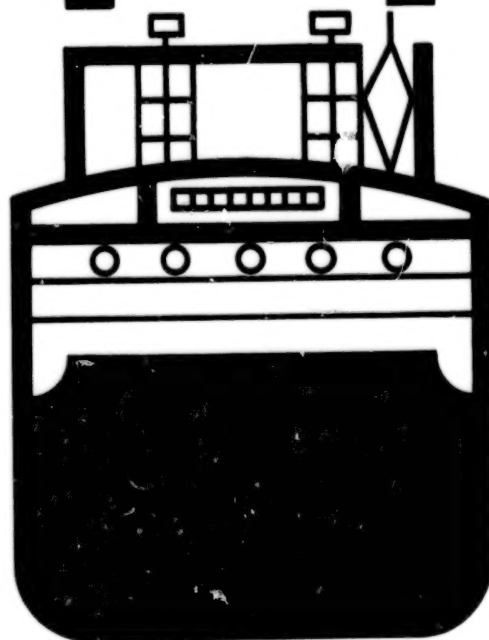


# ICC82

# ORIGINAL

Interstate Commerce Commission  
1982 Annual Report

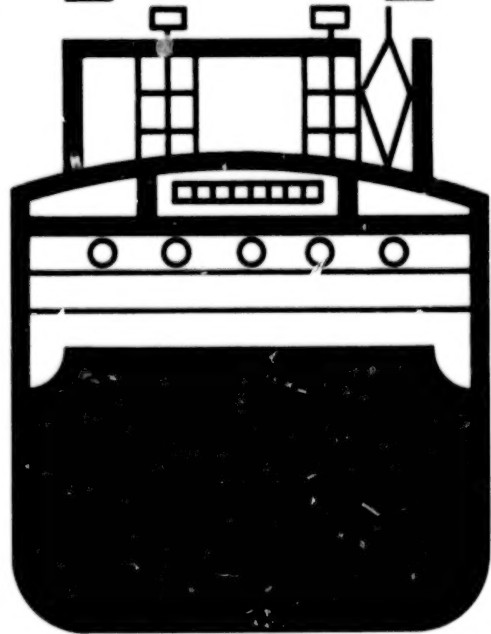
## COMPLETED



# ICC82

96th Annual Report of the  
Interstate Commerce Commission

Fiscal Year Ending  
September 30, 1982





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# LETTER OF TRANSMITTAL

## To the Congress of the United States

Washington, D.C., April 4, 1983

It is my pleasure to submit the ninety-sixth Annual Report of the Interstate Commerce Commission, in accordance with the Interstate Commerce Act.

The report generally embraces the fiscal year ended September 30, 1982, except in the discussion of significant actions that transcend the 12-month period or where necessary to conform to various statistical analyses.

The statement of appropriations and aggregate expenditures for the 1982 fiscal year appears in Appendix D.

Reese H. Taylor, Jr.  
*Chairman*

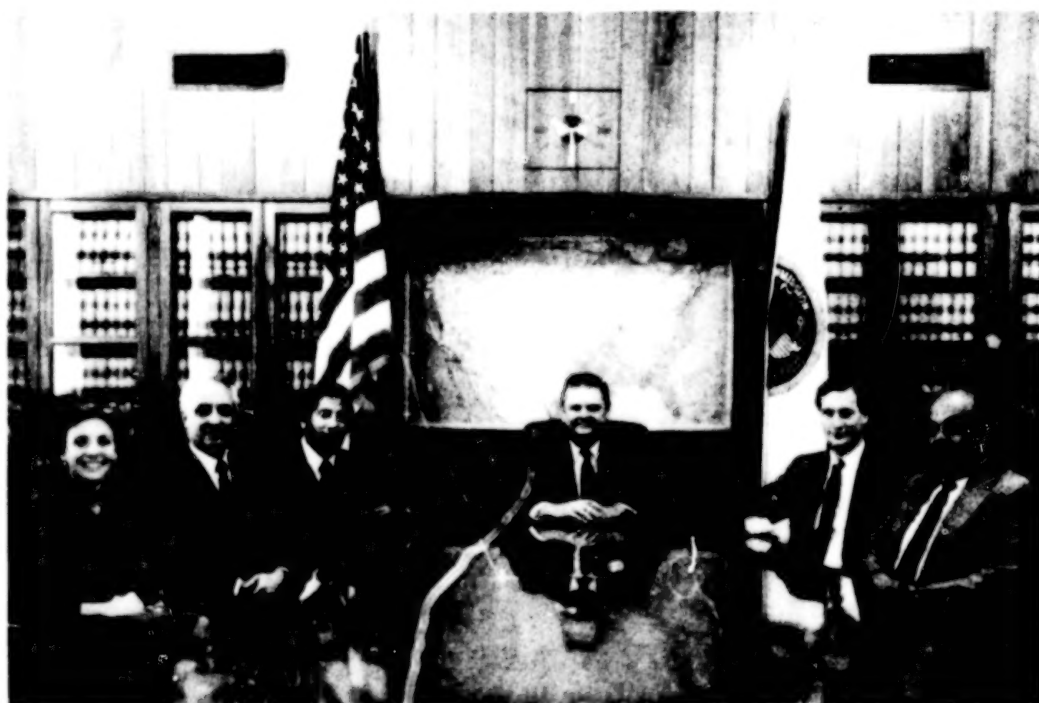
## THE COMMISSION

(As of September 30, 1982)

	<i>Appointed</i>	<i>Term Expires Dec. 31</i>
Reese H. Taylor, Jr., Chairman (R) Nevada . . . . .	1981	1983
Reginald E. Gilliam, Jr., Vice Chairman (D) Virginia . . . . .	1980	1982
Malcolm M.B. Sterrett (R) Maryland . . . . .	1982	1987
Frederic N. Andre (R) Indiana . . . . .	1982	1987
J.J. Simmons, III (D) Oklahoma . . . . .	1982	1985
Heather J. Gradison (R) Ohio . . . . .	1982	1988

Charles L. Clapp resigned as a member and vice chairman of the Commission on March 19, 1982. Robert C. Gresham resigned as a member of the ICC on June 18, 1982. Commissioner Reginald E. Gilliam, Jr. was elected vice chairman on January 1, 1982, and resigned as a member of the Commission on February 1, 1983.

Four new members joined the Commission during the year. They are Malcolm M.B. Sterrett and Frederic N. Andre (nominated by President Reagan on September 24, 1981), J.J. Simmons, III (nominated March 15, 1982), and Heather J. Gradison (nominated March 18, 1982). Commissioner Sterrett was confirmed by the U.S. Senate on February 9, 1982 and was sworn in as member of the Commission on February 12. Commissioner Andre was confirmed on March 16 and was sworn in on March 19. Commissioner Simmons was confirmed on April 1 and was sworn in on April 27. Commissioner Gradison was confirmed on June 16 and was sworn in on June 18.



Interstate Commerce Commissioners, left to right, Gradison, Andre, Gilliam (Vice Chairman), Taylor (Chairman), Sterrett and Simmons.

## Functions and Responsibility

The ICC is an independent Federal agency responsible for regulating interstate surface transportation within the United States. In carrying out its regulatory responsibilities, the ICC attempts to assure that competitive, efficient and safe transportation services are provided to meet the needs of shippers, receivers and consumers.

Today, the ICC maintains jurisdiction over some 25,000 for-hire companies providing surface transportation in the United States. These companies include railroads, trucking companies, bus lines, water carriers, one coal slurry pipeline, freight forwarders, and transportation brokers.

The ICC formerly was authorized to have 11 commissioners, who were appointed by the President and confirmed by the Senate for seven year terms. But in August 1982, the Congress passed and the President signed into law legislation that reduced the authorized strength of the Commission first to seven members on January 1, 1983, and then to five members on January 1, 1986. Persons appointed to the Commission on or after January 1, 1984, will be authorized to serve only five year terms. As the fiscal year ended, the ICC had six commissioners.

## How the ICC Operates

The commissioners supervise all activities, with specific responsibilities delegated to 14 offices and bureaus. Regular agenda meetings are held to act on Commission matters.

The chairman coordinates and organizes the Commission's work and represents it in legislative matters and in relations with other government agencies. The chairman is the executive head of the Commission and has general responsibility for:

1. Overall management and functioning of the Commission.
2. Formulation of plans and policies designed to assure the effectiveness of the Commission and the administration of the Interstate Commerce Act.
3. Identification and early resolution of major regulatory problems.
4. Development and utilization of effective staff support to carry out the duties and functions of the Commission.

The vice chairman represents the Commission or acts in place of the chairman when the chairman is not available. Additionally, the vice chairman has been delegated important functions by the Commission, including oversight of matters involving the admission, disbarment or discipline of practitioners.

The Commission's daily activities during the fiscal year were carried out through an organizational structure consisting of the 14 offices and bureaus, as follows:

- Office of the Managing Director—manages day-to-day operations of the Commission.
- Office of the General Counsel—defends Commission decisions challenged in court, renders legal opinions to the Commission.
- Office of the Special Counsel—created by the Commission to represent the public in proceedings before the ICC.

- Office of Legislative Counsel—assists in developing Commission legislative proposals and Congressional testimony, analyzes legislative proposals and assists Congress in drafting legislation.
- Office of the Secretary—the issuance and documentations center of the Interstate Commerce Commission. The Secretary is the custodian of the Commission's seal and records and is responsible for issuance of ICC decisions.
- Office of Hearings—staff of administrative law judges responsible for conducting Commission hearings.
- Office of Proceedings—processes formal cases pertaining to operating rights, financial matters, rates and competitive practices.
- Office of Transportation Analysis—provides economic advice when needed or requested by any other ICC bureau or office. Performs transportation research and conducts economic and statistical analyses relating to regulation and to specific proceedings before the agency.
- Office of Compliance and Consumer Assistance—maintains close liaison with the activities of railroads, trucking companies, barge lines, freight forwarders, and rate bureaus to insure that these industries operate in compliance with ICC policies. Provides assistance to the public who are having problems with companies regulated by the Commission.
- Office of Public Affairs—furnishes information to the media and the public about ICC decisions and other activities, conducts briefings for U.S. and foreign visitors.
- Office of Governmental Affairs—assists Members of Congress on matters pertaining to the Interstate Commerce Commission and coordinates activities of the agency with the states.
- Small Business Assistance Office—functions as a clearinghouse or focal point for resolution of small business problems in the area of surface transportation and provides the Commission with a broad perspective on small business problems.
- Bureau of Accounts—concerned with the accounting phases of effective economic regulation, prescribing uniform accounting rules, auditing books of transportation companies, and reviewing financial reports.
- Bureau of Traffic—is concerned with publication, filing and interpretation of tariffs, and their suspension before they become effective if they appear unreasonable or unlawful.

## YEAR IN REVIEW

### 1981

- October 1 ..... ICC transmits report to Congress on Rail Carrier Cargo Liability Study pursuant to Section 211 of the Staggers Rail Act of 1980.
- October 8 ..... ICC announces it will replace revenue-based fuel surcharge for owner-operators with a mileage-based method.
- October 13 ..... ICC orders nationwide reduction of recyclable rates to a level at or below 146 percent of revenues to variable costs.
- October 16 ..... ICC proposes modification of rail division of revenue procedures.
- October 19 ..... ICC ends quarterly monitoring of AAR car service rules.
- October 29 ..... Commission's Chief Law Judge holds first docket management conference on 864 rate complaints filed under Section 229 of the Staggers Rail Act.
- November 6 ..... ICC removes prohibition against motor property carriers holding duplicate operating rights.
- November 16 ..... ICC begins program of granting motor contract carriers waivers from tariff filing requirements.
- November 18 ..... ICC adopts new rules for accounting and reporting of railroads' freight train car repair costs.
- November 27 ..... ICC adopts new rules for accounting for intangible assets.
- November 30 ..... ICC issues rules for processing abandonments filed by the Consolidated Rail Corporation pursuant to the Northeast Rail Service Act of 1981.
- December 4 ..... ICC proposes to index motor carrier revenues for classification purposes.
- December 9 ..... ICC rules that requirement for regulated carriers to keep tariffs open for public inspection supersedes antitrust concerns in providing tariffs to other carriers.
- December 21 ..... ICC issues interim guidelines for rail rates on coal shipments.
- December 23 ..... Commissioner Gilliam elected ICC vice chairman for 1982.
- December 24 ..... ICC adopts procedures for inclusion of estimated or foreseeable future costs in general increases filed by motor carriers of property.



**1982**

- January 22 ..... ICC issues interim procedures for compensating Amtrak for use of its Northeast Corridor facilities by freight and commuter operators.
- January 26 ..... ICC seeks public comment on proposed deregulation of railroad boxcar traffic.
- January 27 ..... ICC sets new timetable to implement mileage-based fuel surcharge for owner-operator truckers.  
Commission decentralizes complaint-handling program; consumer assistance to continue.
- February 8 ..... ICC extends provisional certification of 36 states to continue to regulate intrastate rail rates.  
ICC eliminates accounting and reporting requirements for Class II railroads.
- February 11 ..... ICC announces it will investigate Canadian motor carrier entry reciprocity.
- February 12 ..... Motor carrier fuel surcharge required to be incorporated into base rates.
- February 16 ..... Malcolm M.B. Sterrett sworn in as a member of the ICC.
- February 17 ..... ICC to permit owner-operators to lease equipment and drivers to private carriers.
- February 18 ..... ICC, Small Business Administration and Department of Transportation launch second series of independent owner-operator conferences throughout the United States.
- February 19 ..... Commission adopts new rules reducing information requirements and incorporating new time limits on rail consolidations.
- February 22 ..... ICC adopts guidelines for business entertainment expenses of regulated carriers.
- February 25 ..... ICC streamlines rules for construction, acquisition and operation of rail lines.
- March 2 ..... ICC adopts final rules simplifying procedures for waiving collection of insignificant amounts for railroads.
- March 8 ..... ICC asks Congress to eliminate Commission jurisdiction over issuance of securities by interstate trucking companies.
- March 16 ..... ICC adopts new rules for financial statement classification of deferred income taxes.



- March 19 ..... Frederic N. Andre sworn in as a member of the ICC.  
ICC acts to spur price competition among railroads  
by cancelling long-standing traffic protective condi-  
tions.
- March 24 ..... ICC proposes to exempt out of service rail lines  
from abandonment regulations.
- March 25 ..... Commission approves control of Norfolk & Western  
Railway Company and Southern Railway Company  
by Norfolk Southern Corporation.
- March 26 ..... ICC approves general rate increase proposed by  
nine motor carrier rate bureaus.
- April 7 ..... ICC reopens 21 maximum rail rate reasonable cases  
for coal transportation and requires updating of evi-  
dence.
- April 13 ..... ICC terminates the motor carrier fuel surcharge pro-  
gram and implements a mileage compensation pro-  
gram for owner-operators.
- April 26 ..... Commission approves acquisition of control of bank-  
rupt Boston & Maine Railroad by Guilford Transpor-  
tation Industries, Inc.
- April 27 ..... J.J. Simmons, III sworn in as a member of the ICC.
- May 12 ..... ICC exempts rail movements of beer ingredient  
(hops) from Commission regulation.
- May 19 ..... ICC rejects trucking industry request for a declara-  
tory order proceeding to establish guidelines on  
reasonableness of motor carrier discount rates.
- June 1 ..... ICC approves Missouri-Kansas-Texas Railroad's con-  
trol of Oklahoma, Kansas and Texas Railroad.
- June 16 ..... ICC holds oral argument on proposal to exempt coal  
moving by rail for export from Commission regula-  
tion.
- June 18 ..... Heather J. Gradison sworn in as a member of the  
ICC.  
ICC proposes to exempt rail contracts covering pro-  
tective hot/cold services.
- June 21 ..... ICC revokes antitrust protection for per diem and  
mileage rate agreements for trailers and containers  
moving in exempt TOFC or COFC operations.
- June 24 ..... ICC issues railroad cost of capital findings for calen-  
dar year 1981.
- June 29 ..... ICC proposes to lift restrictions that prohibit motor  
carriers from filing rates naming specific shippers,  
receivers and locations.

June 30	ICC modifies leasing rules to protect owner-operators.
July 2	ICC reports to Congress on customer pickup of food and grocery products by truck.
July 6	ICC decides it lacks jurisdiction over motor transportation of hazardous waste.
July 20	ICC issues report on commuter operations in the Philadelphia area with recommendations for cost savings.
July 22	ICC holds oral argument on proposed consolidation of Union Pacific, Missouri Pacific and Western Pacific Railroads.
July 23	ICC testifies at Congressional oversight hearings on the Motor Carrier Act of 1980. ICC proposes modifications of its regulations governing feeder line development program.
July 28	Commission approves acquisition of control of the Delaware & Hudson Railway Company by Guilford Transportation Industries, Inc.
August 4	ICC issues final rules for determining railroad costs in connection with surcharges on light density lines.
August 5	ICC issues provisional certification to State of Illinois to regulate intrastate rail rates.
August 10	ICC approves financing plan for Chicago & North Western rail access to Wyoming's Powder River Basin coal fields.
August 12	ICC sets rate of return to be used in calculating alternate rail uses in abandonment cases.
August 17	ICC requires the three major rail rate bureaus to amend their agreements before granting new anti-trust immunity.
August 19	ICC adopts national weight formula resulting from 1977-78 study for allocating motor carrier platform expenses.
August 25	ICC eliminates filing of annual financial reports by rate bureaus.
August 27	ICC seeks public comment relative to implementation of new Uniform Rail Costing System (URCS).
August 30	ICC publishes guide to assist rail users in deciding whether to buy and operate freight lines. ICC issues proposed required content of notices to discontinue commuter service by the new Amtrak Commuter Services Corporation.

- September 1 ..... ICC releases report on Small Community Service Study mandated by the Motor Carrier Act of 1980.
- September 3 ..... ICC denies request for new rules to quantify rail carriers' costs and operations under the Long-Cannon amendment to Staggers Act.
- September 13 ..... Commission announces approval of the consolidation of Union Pacific, Missouri Pacific and Western Pacific Railroads.
- September 14 ..... ICC proposes to eliminate regulation of trackage rights agreements between railroads.  
ICC adopts new procedures to expedite handling of rail contract exemption requests.
- September 20 ..... President Reagan signs Bus Regulatory Reform Act of 1982.  
ICC proposes procedures for exempting transactions involving motor property carriers.
- September 22 ..... ICC proposes procedures to review state regulation of intrastate bus rates under the Bus Regulatory Reform Act of 1982.
- September 28 ..... ICC proposes revisions to its abandonment regulations which reflect recent policy changes and court decisions.  
ICC proposes new rules for collective rate action by motor passenger carriers.
- September 30 ..... ICC proposes lifting securities regulation over non-carrier holding companies and removing financial conditions previously imposed on motor carriers subsidiaries and parent companies.

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## LEGISLATION

During fiscal year 1982, the Congress continued its focus on regulatory reform of the transportation industry with the passage of the Bus Regulatory Reform Act of 1982. Just two years earlier, major reform legislation was adopted in the motor carrier, household goods and rail areas.

The Commission actively participated in deliberations leading to passage of the bus bill, as well as oversight of the earlier transportation legislation. The Commission testified at hearings in both the House and Senate to assist Congress in these endeavors. In addition to testifying at Congressional hearings on these and other matters, the Commission provided assistance to Congress as it debated various transportation issues.

On February 10, 1982, the Commission submitted a legislative proposal to amend the entry provisions of the Interstate Commerce Act by deleting requirements to show public need or public convenience and necessity with respect to applications by motor or water common or contract carriers, freight forwarders, or brokers for transportation of passengers. The Commission's proposal also would amend the Act to shorten the time periods for processing entry applications. Finally, the proposal would permit the Commission to issue temporary authority to fit, willing and able motor and water carriers when emergency or other limited term conditions preclude handling of the matter under normal application procedures. This would eliminate one step in the three step (emergency authority, temporary authority and permanent authority) application process. The Commission's proposal indicated that the public interest would be better served by a fitness-only standard, thus relieving carriers, shippers and the

Commission of the burden involved in meeting the existing entry standards.

No action was taken on the Commission's proposal in FY 1982. However, the bus legislation substantially deregulated passenger brokers, and it is anticipated that Congress will consider additional motor carrier legislation next year. The Commission is presently considering various additional legislative initiatives. As in the past, the Commission will actively participate in the legislative process as new initiatives are considered.

Another area which is still under consideration by the Congress is the question of coal slurry pipeline legislation. This promises to be one of the key transportation issues facing the Congress during the next fiscal year, along with continued oversight of the existing major transportation legislation. The Commission will continue to play an active part in these and other debates in Congress.

A more detailed description of the Commission's activities before the Congress is provided in the following sections.

### Railroads

*Rail Oversight*—On November 10, 1981, the Commission testified before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation on implementation of the Staggers Rail Act of 1980. Accompanying the Commission's written statement were the following supporting documents: (1) a summary of the proceedings conducted pursuant to the Act; (2) a table showing the status of each proceeding; (3) a summary of all litigation

arising out of implementation of the Act; and (4) a list of problems encountered in interpreting the Act and suggestions for clarifying amendments.

In implementing the Staggers Act, the Commission stated that it attempted to balance the competing interests of all parties, keeping in mind the goals of the Act—increased competition and a regulatory policy which would foster sound economic conditions in transportation and permit efficient carriers to earn adequate revenues. The testimony reflected the Commission's belief that the Staggers Act, as implemented by the ICC, has been successful in removing unnecessary regulatory burdens while retaining the protections afforded by regulation where there is an absence of effective competition.

The Commission's statement made a number of general observations about the effects of the legislation. According to the Commission, railroad earnings have improved since passage of the Act, mainly as a result of the greater flexibility afforded by the Staggers Act. The industry has moved swiftly to take advantage of the provisions of the Act. In the contract rate area, the testimony indicated that more than 650 rail rate contracts had been filed since the effective date of the Act and pointed out that, as of November 10, 1981, the Commission was receiving about 100 new contract rate filings per month. As of the end of the fiscal year, contract filings had increased to almost 300 per month. The Commission concluded that the substantial use of the contract provision indicates that both carriers and shippers recognize the positive aspects of the provision,

and the Commission predicted that the filings will continue to increase as more railroads and shippers become aware that contracts offer answers to a wide variety of transportation problems.

There also has been considerable use of the joint rate surcharge and cancellation provisions of the Act. The Commission estimated that over 113 surcharges became effective during the preceding year, 67 of which were filed by Conrail. Out of the total, preliminary figures showed that 37 surcharges applied over light-density lines; 27 were filed by ten of the Class III rail carriers.<sup>1</sup> While the level of activity was high, the Commission estimated that only one-half of one percent of all carloadings were subject to surcharges. The Commission supplied a list of surcharge filings for the hearing record.

As a result of expansion of the Commission's exemption powers under the Staggers Act, there has been increased activity in this area. The Commission has given final approval to the exemption of trailer-on-flatcar/container-on-flatcar traffic and is actively considering a number of other broad exemptions. Among these, the testimony cited the possible exemption of export coal, boxcar traffic, light-density line abandonments, railroad securities, and trackage rights applications or joint ownership or use agreements. In addition, the Commission is analyzing data with respect to the rail transportation of all commodities to determine which rail services meet the statutory criteria for exemption.

In a title-by-title analysis, the Commission outlined the provisions of the

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<sup>1</sup> Final figures showed 51 of the total as light-density line surcharges.



Act and discussed in detail some of the more far-reaching and pivotal decisions implementing these provisions. In summarizing, the Commission was of the view that the Staggers Act is a sound and forward-looking statute and, although it was too soon to determine definitively the full effects of the law, legislative changes did not appear warranted at the time, other than possible minor technical clarifications.

*Railroad Bankruptcy*—On December 8, 1981, the Commission testified before the Senate Committee on Commerce, Science and Transportation on the status of the Rock Island's rail lines since passage of the Milwaukee Railroad Restructuring Act and the Rock Island Transition and Employee Assistance Act. The Commission's testimony focused on efforts to purchase the various rail lines and ways to address the current problems, including comments on S. 1879, a bill to amend the Milwaukee Road and Rock Island Railroad Acts.

The Commission reported that, as of November 30, 1981, only a small portion of the system had been sold. Excluding the Tucumcari line, for which a purchase agreement had been executed in advance of the court's liquidation order, the Trustee had sold approximately 230 miles of the 7,000-mile Rock Island system. According to the Commission, the problem was not that there was a lack of purchasers, but rather settling on a price to be paid for the sale of the assets during the negotiation process. At that time, there was no mechanism in effect to help the parties resolve the real differences that existed between them.

In view of the situation, the Commission issued a notice to the parties requesting comments on whether interim service should be allowed to continue

and, if so, what the appropriate compensation formula should be.

The Commission supported S. 1879 as a workable approach to resolving the Rock Island situation. In commenting on the bill, the Commission stated the legislation would be helpful in clarifying the Agency's responsibilities and in ensuring that essential rail service is continued where financially responsible purchasers are available and willing to purchase the lines of bankrupt railroads at a reasonable price. Of particular importance was Section 4 which establishes procedures whereby a financially responsible person may resort to the Commission if its bona fide offer to purchase a rail line has been rejected by the Trustee.

The Senate passed S. 1879 on March 2, 1982. The Commission submitted comments on the legislation on April 22, 1982 to the Subcommittee on Commerce, Transportation and Tourism of the House Committee on Energy and Commerce. In addition to updating the Senate testimony, the Commission discussed the possible constitutional issues raised by a recent Supreme Court decision.<sup>2</sup>

*Railroad Mergers*—The Commission's policy on railroad mergers was outlined in testimony before the Senate Committee on the Judiciary on March 26, 1982. In addition to discussing its policies and procedures in the rail merger area, the Commission gave the status of pending merger applications and its views on the holding company corporate structure which has now been adopted by most of the Nation's railroads.

<sup>2</sup> *Railway Labor Executives' Ass'n. v. Gibbons*, 102 S. Ct. 1169 (1982).



As far as the status of pending applications, the Commission reported as of the date of the testimony that a final decision had been reached in the Norfolk Southern merger. The Union Pacific/Missouri Pacific/Western Pacific merger and an application of Guilford Transportation Industries, Inc. to acquire the Boston and Maine Railroad were pending. Those mergers have since been approved.

On the issue of holding companies, the Commission noted that there has been no major investigation into the impact of holding companies on their rail carrier subsidiaries since the ICC reported to Congress on the subject in 1977. That report concluded that there was no apparent causal relationship between railroad corporate structures and the provision of effective transportation service; however, it did express concern that continued asset separation poses a potential threat to the future health of the Nation's rail system. Even though no formal investigation has been instituted recently, the Commission assured the Committee that routine audits pick up transactions between carriers and their affiliated companies and that, even though the Commission's jurisdiction and power of inquiry are limited by statute, the agency's Bureau of Accounts will be monitoring for abuses.

The testimony cited a particular situation involving the Burlington Northern Railroad. In that case the Commission declined to assert jurisdiction over BN's corporate restructuring which resulted in the formation of a holding company. The Commission applied the single-system doctrine which holds that the ICC has no jurisdiction

over a non-carrier's acquisition of control of a single-integrated rail system even if the system is comprised of separate corporations. The U.S. Court of Appeals for the Eighth Circuit upheld this statutory construction, but remanded the case for further findings on the BN's interest in several terminal companies.

## **Buses**

The Commission appeared before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, Science and Transportation on March 8, 1982, to testify on the House proposal for deregulation of the intercity bus industry, H.R. 3663. The Commission's testimony focused on four major issues that it believed were at the heart of reform for the industry—eased entry, flexible pricing in conjunction with the elimination of anti-trust immunity for collective ratemaking, eased exit, and clarification of the Federal-State relationship. While the Commission believed the bill offered a balanced approach and was a considerable improvement over present law, it suggested changes that would assure that the bill achieved its stated policy of promoting competitive and efficient transportation service.

In the entry area, the Commission commended the House for eliminating the present burdensome public convenience and necessity test and the need for public support of an application in the case of contract carriers and brokers of passengers. However, the Commission urged the Senate to adopt a "fitness-only test" for all motor carriers of passengers due to the small number of firms dominating the bus industry and the increasing competition from other modes which are largely de-

regulated. In conjunction with the expanded application of the fitness-only standard, the Commission believed that the test should be limited to issues of safety and insurance, so as not to place additional barriers to entry on the carriers.

In the area of rates, the Commission generally favored a zone of ratemaking flexibility similar to the zone in H.R. 3663, with greater downward flexibility and an ultimate broadening of the zone at the end of three years. An expedited schedule for the elimination of antitrust immunity was also proposed.

In the exit area, the Commission recommended reducing the time period during which continuation of service could be ordered in connection with applications by carriers to reduce or discontinue intrastate service. The Commission also proposed that the public interest test be deleted, and that a protestant challenging a reduction or discontinuance in service be limited to showing that continuance would not constitute an unreasonable burden on interstate or foreign commerce.

Many of the Commission's suggestions were incorporated into the final compromise version of the legislation which was signed into law on September 20, 1982 as Public Law 97-261. These included authority which permits the ICC to exempt motor carriers of property from the statutory merger procedures and the elimination of ICC jurisdiction over the issuance of securities by motor carriers.

## Trucking Companies

*Motor Carrier Oversight*—The Motor Carrier Act of 1980 requires that Congress conduct annual oversight hearings on implementation of the Act for a period of five years. On June 23, 1982,

the Commission testified before the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation during the second phase of these hearings.

In addition to a general statement outlining its position, the Commission submitted the following supporting data: (1) a list of the proceedings implementing the Motor Carrier Act and their current status; (2) a summary of significant Motor Carrier Act proceedings under judicial review; (3) a package of studies and reports prepared under specific Congressional directive or as part of the Commission's ongoing effort to monitor the effects of the Act; (4) earnings and traffic volume data for the 100 largest motor carriers of property for the fourth quarter and the year 1981; and (5) information on 1982 general rate increases.

The Commission cited three major Motor Carrier Act reforms—eased entry, rate flexibility and more restrictive antitrust immunity—which have produced a more competitive environment for the trucking industry. In implementing the legislation, the Commission stated that it strived to "promote competitive and efficient transportation services" in accordance with the objectives of the Motor Carrier Act's transportation policy. The testimony reflected the Commission's belief that the Act and its implementation have been successful in removing unnecessary regulatory burdens and that the financial difficulties experienced by motor carriers in the last year were the result of poor economic conditions rather than regulatory reform.

While the first year of implementation was marked by an increase in the number of applications for permanent authority, the trend this year was contract carrier applications. The number of new applicants for all types of operating authority also rose. According to the Commission, levels of service remain good, as reflected by the number of complaints which continued at substantially below pre-Motor Carrier Act levels. The Commission reported on the progress of its investigation into service to small communities mandated by Section 28 of the Act. The results indicate that a far greater percentage of those surveyed said that more service is now available to small communities than existed prior to passage of the Act.

The Commission also reported that total motor carrier rate filings have increased from 427,043 in FY 1980 to 512,184 in FY 1981. That figure was projected to exceed 600,000 for FY 1982, and, in fact, final data for such filings during the fiscal year exceeded 700,000. The vast majority of these filings were rate reductions and the number of independent rate filings increased by 90 percent over 1980. The Commission noted that it has actively cooperated with the Motor Carrier Rate-making Study Commission in its investigation of the collective rate-making process. It submitted testimony on two separate occasions, in November of 1981, and again in January of 1982, providing data to assist the Study Commission in its investigation.

The testimony also addressed the provisions of the Motor Carrier Act

which were designed to assist owner-operators. It was the conclusion of the Commission that these provisions have had little impact on the vast majority of owner-operators, in particular, the single-unit fleet owner to which these reforms were directed. After another year of experience, owner-operators' participation in the eased entry provisions of the Motor Carrier Act of 1980 for handling food or edible products is still limited and the expansion of the list of exempt commodities has made no appreciable difference. Perhaps the most disappointing aspect of implementation of the owner-operator provisions is the failure of owner-operators to take advantage of the option of converting to carrier status. The testimony cites a number of reasons for this, including a lack of knowledge about the application process and the perception on the part of many owner-operators that the Motor Carrier Act was designed to benefit only owner-operators with large fleets.

The Commission concluded its testimony by providing a section-by-section analysis of implementation of the Motor Carrier Act.

*Household Goods Transportation—* On October 20, 1981, the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation held oversight hearings on implementation of the Household Goods Transportation Act of 1980. The Commission testified on efforts made to carry out the objectives of the legislation. It described the revised operational rules adopted by the Commission.<sup>3</sup> Because the rules

<sup>3</sup> Ex Parte No. MC-19 (Sub-No. 36A), *Practices of Motor Common Carriers of Household Goods* (Revision of Operational Regulations), 132 M.C.C. 599 (1981).

had been stayed by the Seventh Circuit Court of Appeals at the time of the hearings, the Commission was unable to report on what the effects were on the industry. However, the statement did cite the benefits for both carriers and shippers which were anticipated as a result of the new regulations.

One of the main benefits was reducing paperwork for carriers by eliminating or substantially reducing the requirements of various reports. In addition, there are rate and service innovations such as discounts and rates based on pre-payment of charges and also provisions designed to protect individual shippers, including requirements for improved pre-move information and the establishment of specific customer complaint and inquiry handling programs.

Although noting that it was too early to determine the Act's overall effects, the Commission expressed its belief that the legislation would benefit the industry and shippers by eliminating industry abuses and promoting a safe, stable and financially sound household goods transportation system. Preliminary indications are that the carriers are utilizing the various price and service options available in the Act. The Commission reported that ten of the major carriers have already instituted binding estimate procedures and two of these offer the shipper the benefit of the lower of the binding estimate or the actual weight-based price. Four carriers have a form of guaranteed service option including a failure to perform allowance, where, on shipments weighing 2,000 pounds or more, they will be liable for up to \$100 for each day of delay beyond the delivery time indicated on the service order. The testimony included data on consumer complaints. Commenting on the

number of complaints, the Commission attributed the decline, in part, to the decrease in tonnage which the industry has experienced, but expressed the view that the legislation will have a positive impact on shipper-carrier relations. The Commission closed its testimony by citing available data from the preceding 18 months which indicated that the industry's overall financial condition had improved.

## Other Issues

*Coal Slurry Pipelines*—The issue of coal slurry pipelines was again the subject of intense debate in Congress, and the Commission was asked to comment on proposed legislation on several occasions during the year. The Commission testified before the House Committee on Interior and Insular Affairs on November 17, 1981, and again on December 9, 1981, before the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation, on H.R. 4230, the "Coal Pipeline Act of 1981."

The Commission took no position on the policy question of whether eminent domain should be granted to qualifying coal pipeline operators but focused instead on the transportation issues raised by H.R. 4230. The bill would give the ICC the authority to certify coal pipelines. Generally, the Commission supported the legislation as a sound approach to the transportation issues involved in coal slurry pipeline development.



If the legislation were passed, the Commission would regulate the operations of both coal pipelines and the railroads. Faced with that prospect, the Commission stated that it is neither pro-coal pipeline nor pro-railroad, but would be interested only in determining that the most efficient mode of transportation, given particular and differing circumstances, be utilized. A potential problem area raised by the Commission was the conflict between long-term contracts and the common carrier obligation. H.R. 4230 attempts to resolve the problem by requiring that pipeline carriers enter into similar contracts, including similar rates and conditions, with all shippers who are ready, willing and able to enter into such contracts at the time. The Commission felt that this proposal was a good first attempt to solve the common carrier obligation problem for coal pipelines, but that further study and revision were needed to render the provision less ambiguous.

The Senate began its consideration of the issue with a hearing before the Energy and Natural Resources Committee on May 10, 1982. The Senate bill, S. 1844, would authorize the Secretary of Energy to determine whether the construction of a pipeline is in the national interest. After such a determination, a person proposing to build a coal pipeline could acquire rights-of-way over private lands through eminent domain. Because the Commission believed that transportation considerations are foremost in the certification process for coal pipelines, and because S. 1844 did not address

the common carrier obligation problem, the agency advocated the approach taken in H.R. 4230, as further refined by the House Public Works Committee, following the December testimony.

Similar comments were submitted to the Subcommittee on Surface Transportation of the Senate Committee on Commerce, Science and Transportation on September 16, 1982. One additional concern was raised by the Commission about a provision of H.R. 4230 which would require an applicant to reimburse the agency processing a request for the use of the Federal power of eminent domain, for the administrative costs incurred. The Commission suggested that, if the Senate concludes that an applicant should pay the administrative costs, then the provision should be worded to insure that money goes directly to the agency involved rather than to the Federal Treasury.

*The Regulatory Flexibility Act*—On October 21, 1981, the Commission testified before the Subcommittee on Export Opportunities and Special Small Business Problems of the House Small Business Committee on implementation of the Regulatory Flexibility Act. Under this legislation, Federal agencies are required to tailor regulatory and informational requirements to fit the scale of businesses, organizations and governmental jurisdictions that are subject to regulation. At the outset, the Commission stated that it shared the Subcommittee's concern for the disproportionate economic burden placed on small entities compared to their larger business competitors in complying with government regulations.

The Commission detailed its efforts to comply with the Act. These included the distribution of an Administrative Issuance designed to ensure that ICC

rulemakings comply fully with the Regulatory Flexibility Act. The Issuance provides that the Commission's rules not have an adverse significant economic impact on small entities and that all rulemaking proceedings contain an initial or final regulatory flexibility analysis, if required. In addition, the associate director of the Office of Proceedings was designated as the regulatory flexibility officer. In this capacity, he is responsible for reviewing all notices of proposed rulemaking and all final rules to ensure that the Commission is in compliance.

*Standard Level User Charges*—The system of Standard Level User Charges (SLUC) was the subject of testimony before the Subcommittee on Public Buildings and Grounds of the House Public Works and Transportation Committee on October 14, 1982. The SLUC is the rental paid by Federal agencies for the space they occupy. The fee is assessed by the General Services Administration, the Federal agency responsible for administering

the system. The SLUC is designed to encourage more efficient space utilization as well as provide funds for the acquisition and maintenance of Federal office space.

The Commission testified concerning the dramatic increase in its assessment for FY 1983. Office space in the ICC's Washington headquarters jumped from \$9.02 per square foot to \$20.02 per square foot. Even after giving up approximately 100,000 square feet of space, the agency will be faced with reducing approximately ten percent of its staff in order to meet the expenses, since the majority of its already reduced budget goes toward salaries. According to the Commission, the staffing cutbacks will threaten its ability to perform its statutory functions. It recommended that alternative pricing structures and incentive schemes be devised instead of arbitrarily raising charges to the prevailing market rates, since the current proposal results in numerous inequities and ultimately burdens the taxpayer.

## ADMINISTRATION

### Organization and Management

The restructuring of the Bureau of Accounts, the Office of Compliance and Consumer Assistance, and the Office of Transportation Analysis, as well as the realignment of support staff in the Office of the Managing Director during the fiscal year was a logical follow-on to changes in Commission organization begun in fiscal year 1981. Major staff reductions accompanied the FY 1982 reorganizations, with more than 100 employees involuntarily separated or demoted. The reorganizations in the operating bureaus have structured these units internally to carry out rail and motor-related functions. A pending reorganization of the Office of Proceedings will follow the same pattern.

Even as the Commission was carrying out actions to streamline procedures and staff, it was implementing systems to streamline and provide for accountability in administrative management areas. Significant improvement has been made in monitoring and reporting on the use of Commission staff resources. Managers regularly are provided with current and precise data on staff usage for established increments of time. Review and analysis of this data assists managers in making more informed decisions regarding staffing and program-related alternatives.

During the year, the ICC completely restructured its rules of practice. This was a significant change since it consolidated into one section of the Code of Federal Regulations all the procedural rules which show how the Commission operates and how outside parties must proceed when dealing with the ICC. This was the first time that

such a major restructuring of the Rules of Practice was accomplished.

Another example of ICC's determination to streamline and cut costs is evidenced by the curtailment of free distribution of ICC decisions to all but government agencies and the news media. This action will save the Commission about \$600,000 annually. Interested parties still can acquire copies of decisions and notices from an independent contract service but must pay for them.

About halfway through the fiscal year, the Commission began a subscription program for a daily listing of ICC decisions. Subscribers, both local and outside the Washington, D.C. area, have quick access to a daily list of Commission decisions at a nominal cost.

To cut its cost of doing business even further, the ICC is considering a recommendation to print and distribute to parties of record and subscribers certain of the notices it formerly published in the Federal Register. If implemented, this change could save the Commission hundreds of thousands of dollars.

### Commission Budget

The Commission's fiscal year 1984 budget was developed and submitted concurrently to the Office of Management and Budget and Congress in September 1982. The budget reflects the need for less staff as a result of the reduced regulatory role for the ICC in motor carrier and rail matters.

### Salaries and Expenses Appropriation

On February 24, 1982, Chairman Reese Taylor and other Commission

members and staff appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the ICC's fiscal year 1983 budget request. Testimony was provided to the Subcommittee on Transportation of the Senate Committee on Appropriations on March 24, 1982.

### **Payments for Directed Rail Service Appropriation**

In late September 1979, the Commission ordered the Kansas City Terminal Railway Co. to provide service

over the lines of the Chicago, Rock Island and Pacific Railroad. Total payments during FY 1982 associated with Rock Island directed service were \$4.0 million. Another \$1.4 million was paid to the State of South Dakota for track rehabilitation work performed on abandoned lines of the Milwaukee Railroad in accordance with the provisions of both the Milwaukee Railroad Restructuring Act and the Rock Island Transition and Employee Assistance Act.



## ENERGY AND ENVIRONMENT

### Energy

During fiscal year 1982, the Commission addressed several energy-related issues in rulemaking proceedings. In accordance with the requirements of Section 203 of the Staggers Rail Act of 1980, the Commission last year developed new rules calling for use of a cost recovery mechanism which will permit railroads to recoup increases in fuel and other costs on a quarterly basis.

In a related proceeding, the Commission now is considering the use of a productivity adjustment to the cost recovery mechanism.<sup>1</sup> Adoption of a productivity adjustment factor would permit shippers to benefit (in the form of lower rates) from measurable productivity gains, including energy savings, achieved by rail carriers.

The Commission also acted in a number of cases to approve railroad transportation contracts which permit the storage of various shipper commodities in railcars.<sup>2</sup> This energy-saving innovation represents a departure from the long-standing practice of discouraging such storage through penalty elements in common carrier rates.

Pending before the Commission at the end of the fiscal year were two rulemaking proceedings of major interest to producers, transporters and consumers of coal. In one, the Commission seeks to establish nationwide freight rate guidelines for the move-

ment of coal by rail.<sup>3</sup> In the other, the ICC is considering the possibility of exempting from rate regulation rail movements of coal destined for export.<sup>4</sup>

Several other Commission rulemakings designed to increase energy efficiency in the operations of motor carriers of passengers<sup>5</sup> were preempted by enactment of the Bus Regulatory Reform Act of 1982 on September 20, 1982. Upon implementation by the Commission, this new legislation is expected to promote savings in fuel by allowing carriers (1) to remove from their certificates operating restrictions which unduly limit a carrier's ability to serve intermediate points on existing routes, and (2) to discontinue or reduce service more easily on the intrastate portion of a route for which it has interstate and intrastate authority.

### Environment

Despite a depressed coal market, coal-related rail line construction continues apace. This trend has to a large degree shaped the workload of the Commission's environmental unit. During the year, the unit devoted most of its time to analysis of rail line construction proposals designed to move coal out of the mines or to the facilities of coal-fired utilities.

In accordance with Federal case law and the Commission's environmental rules, all but the most insignificant rail construction proposals are generally treated in an environmental impact statement (EIS). In order to

<sup>1</sup> Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures—Productivity Adjustment*.

<sup>2</sup> See e.g., Ex Parte No. 387 (Sub-No. 70), *Seaboard Coast Line Railroad Company Exemption for Contract Tariff* (not printed), decided December 14, 1981 and Ex Parte No. 387 (Sub-No. 101), *Boston and Maine Corporation, Exemption for Contract Tariff* (not printed), decided March 16, 1982.

<sup>3</sup> Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines—Nationwide*.

<sup>4</sup> Ex Parte No. 346 (Sub-No. 7), *Railroad Exemption—Export Coal*.

<sup>5</sup> See e.g., Ex Parte No. MC-65 (Sub-No. 6), *Petition to Expand Passenger Motor Carrier Superhighway and Deviation Rules*.

keep pace with the growing number of construction applications and to keep costs to a minimum, the Commission has turned increasingly to the use of so-called "third party contracts" for the preparation of EIS's.

Instead of requiring an applicant for rail construction authority to submit an independent environmental report, as required by the rules, the Commission waives submission of the report in return for an applicant's agreement to retain an environmental consultant who will work under the exclusive supervision of the Commission to develop an EIS that will objectively analyze the impact of an applicant's proposal. This approach eliminates duplication of effort and allows the Commission to hold the costs of environmental analysis to a minimum.

During the past year, the Commission successfully employed the third-party approach in preparing supplemental EIS's for controversial rail construction in New York<sup>6</sup> and New Mexico.<sup>7</sup> The ICC also has utilized a third-party contract or similar procedure in developing preliminary draft EIS's for a proposed 82-mile line in Montana<sup>8</sup> and a 65-mile line in Utah.<sup>9</sup> At this time, the Commission continues to serve as lead or cooperating agency in the preparation of environmental studies for six

other active and two temporarily dormant rail construction projects.<sup>10</sup>

Other accomplishments in the environmental area for Fiscal 1982 include (1) completion of thoroughgoing environmental assessments for the consolidation proceedings in which Guilford Transportation Industries sought control over the Boston and Maine<sup>11</sup>, and Delaware and Hudson<sup>12</sup> railroads, (2) initiation of work on the impacts of several rulemaking proposals including Conrail's petition to exempt boxcar traffic from regulation,<sup>13</sup> a proposal to exempt export coal from rate regulation,<sup>14</sup> and a proceeding to establish maximum rate guidelines for rail movements of coal throughout the country,<sup>15</sup> and (3) preparation of environmental assessments for a record number of abandonment applications.

<sup>6</sup> *Somerset R. Corp.—Constr.—Niagara County, N.Y.*, 366 I.C.C. 144 (1982).

<sup>7</sup> Finance Docket No. 28272, *Star Lake Railroad Company—Rail Construction and Operation in McKinley County, New Mexico* (not printed), decided January 28, 1982.

<sup>8</sup> *Tongue River Railroad Line—Construction—in Custer, Rosebud, and Powder River Counties, Montana*.

<sup>9</sup> Finance Docket No. 30044, *The Denver and Rio Grande Western Railroad Company—Construct and Operate—in Carbon and Emery Counties, Utah*.

<sup>10</sup> *Tuscola and Saginaw Bay Railway Company—Construction—in Central Michigan*; *White Pine Power Project—Railroad Construction—in Eastern Nevada*; *Thousand Springs Railroad—Construction—in Northeastern Nevada*; *North Rochelle Railroad—Construction—in Campbell County, Wyoming*; *Chevron Fertilizer Railroad—Construction—in Sweetwater County, Wyoming*; *Navajo Railroad—Construction—in McKinley and San Juan Counties, New Mexico*; *Creston Railroad Line—Construction—in Lincoln County, Washington*; and *Mount Vernon Terminal Railway, Inc.—Construction—in Whatcom County, Washington*.

<sup>11</sup> *Guilford Transportation Industries, Inc.—Control—Boston and Maine Corporation*, 366 I.C.C. 292 (1982).

<sup>12</sup> *Guilford Transportation Industries, Inc.—Control—Delaware & Hudson Railway Co.*, 366 I.C.C. 396 (1982).

<sup>13</sup> Ex Parte No. 346 (Sub-No. 8), *Exemption from Regulation—Boxcar Traffic*.

<sup>14</sup> Ex Parte No. 346 (Sub-No. 7), *Railroad Exemption—Export Coal*.

<sup>15</sup> Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines—Nationwide*.



# RAILROADS

## General Financial Condition

Revenue carloadings of Class I railroads in fiscal year 1982 declined 12 percent from fiscal year 1981 levels. Virtually all of the major commodity groups have been adversely affected by the recession. Also, high interest rates continued to depress new home and automobile sales. With housing starts off, lumber carloadings for Class I railroads declined about 30 percent in fiscal year 1982 compared to fiscal year 1981 and automobile carloadings decreased 15.7 percent. Coal carloadings increased 6.5 percent because a coal industry strike severely depressed traffic levels in fiscal year 1981.

ICC data for the Class I line-haul railroads for the 12 months ending June 30, 1982, and June 30, 1981, shows that revenues increased \$0.3 billion to \$30.1 billion and net railway operating income declined \$0.5 billion to \$1.1 billion. Revenue ton-miles of freight declined 5.7 percent. Despite a marked reduction in Conrail's operating loss, the rate of return on net investment for the Class I line-haul railroads dropped to 3.10 percent from 4.67 percent.

The record income levels reported by the railroad industry in calendar year 1981, which will not be matched in 1982, were due, in part, to enactment of the Economic Recovery Tax Act of 1981 (ERTA). Among other things, ERTA allows railroads to buy and sell tax benefits relating to plant and equipment, allows accelerated depreciation of railroad rolling stock, and allows the total cost of railroad track accounts as of December 31, 1980, to be written-off for tax purposes.

However, passage of the Tax Equity and Fiscal Responsibility Act of 1982 will reduce or repeal some of these tax advantages, particularly the sale of tax benefits. But the remaining provisions should still allow most railroads to improve their cash flow.

Maintenance levels of Class I railroads, in real terms, have risen in recent years. However, maintenance expenditures for the first six months of 1982 declined in comparison to the same period of 1981, as the result of the recession and severe winter weather. Until the economy recovers, maintenance levels will probably continue to be curtailed, as a cash conservation measure and in response to declining traffic volume.

The Staggers Rail Act of 1980 has been in operation for two years. The freedoms accorded the carriers under this Act have enabled the railroads to more quickly adjust their rates for inflationary increases in costs and to implement new marketing techniques. However, like much of the economy, the rail industry has been hard hit by the current recession. Therefore, an assessment of the Act's effect on the financial condition of the rail industry will be difficult until the economy begins to expand.

## Reorganizations

The Commission retains jurisdiction under Section 77 of the Bankruptcy Act over five railroads in reorganization: the Boston and Maine Corporation (B&M); the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee); the Chicago, Rock Island and Pacific Railroad Company (Rock Island); the Morristown and Erie Railroad Company (M&E); and the New York, Susquehanna and Western Rail-

road Company. During the fiscal year, 30 petitions were filed by the trustees and counsel requesting the Commission to set maximum limits of compensation as required by the Bankruptcy Act.

The Commission approved the amended plan of reorganization filed by the Trustees of the B&M.<sup>1</sup> The plan provides for the sale of the outstanding stock to Guilford Transportation Industries, Inc., for cash. For additional information about the sale, see the portion of this chapter on *Mergers and Consolidations*.

The Milwaukee reached an agreement with Grand Trunk Corporation (GTC) for GTC to acquire stock control of the reorganized Milwaukee. The acquisition will be provided for in an amended plan of reorganization to be filed with the Commission early in calendar year 1983.<sup>2</sup> The amended plan will supplement the revised plan of reorganization dated September 15, 1981, previously filed with the Commission.<sup>3</sup> The Commission granted the application by Chicago, Milwaukee, St. Paul and Pacific Railroad Company Bond and Debenture Holders Protective Committee for authority under Section 77(p) of the former Bankruptcy Act to solicit authorization from holders of Milwaukee's debt securities to

represent them in Milwaukee's Reorganization Proceedings.<sup>4</sup>

Several abandoned Milwaukee rail lines have been acquired by states and leased to operators. These include Milwaukee's line between Ortonville, MN and Terry, MT which was acquired by the State of South Dakota and is being operated by the Burlington Northern Railroad Company under a modified rail certificate issued by the Commission.<sup>5</sup> The State of Wisconsin also acquired several former Milwaukee lines to be operated by others under modified rail certificates.<sup>6</sup>

In addition, the Commission approved a proposal for the Milwaukee to acquire and operate itself approximately 100 miles of Rock Island track between Clinton and Washington, IA.<sup>7</sup> Milwaukee will pay \$17 million for the property and expects within 2 years to derive \$5.5 million of annual net revenues from operations over the line. The proposal will assure direct long-term rail service to a \$500 million power plant under construction near Fruitland, IA, in addition to numerous shippers already located on the line.

<sup>1</sup> Guilford Transp. Industries, Inc.—Control—B&M Corp., 366 I.C.C. 294 (1982).

<sup>2</sup> Finance Docket No. 28640 (Sub-No. 9) *Richard B. Ogilvie, Trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company Debtor—Amended Plan of Reorganization* (not printed), decided August 30, 1982.

<sup>3</sup> Finance Docket No. 28640 (Sub-No. 7) *Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Revised Plan of Reorganization*.

<sup>4</sup> Finance Docket No. 28640 (Sub-No. 8) *Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Reorganization-Authorization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company Bond and Debenture Holders protective Committee* (not printed), decided June 9, 1982.

<sup>5</sup> Finance Docket No. 29907—*Burlington Northern Railroad Company—Operation—Between Ortonville, MN and Terry, MT* issued May 4, 1982.

<sup>6</sup> See, for example, Finance Docket No. 29977—*Wisconsin and Western Railroad Company—Modified Rail Certificate*, issued July 16, 1982.

<sup>7</sup> Finance Docket No. 29917 (Sub-No. 1), *Richard B. Ogilvie, Trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Purchase (Portion)—Chicago, Rock Island and Pacific Railroads Company, Debtor (William M. Gibbons, Trustee)—Between Clinton and Washington, IA* (not printed), decided August 17, 1982.



The Rock Island was ordered into liquidation by its Reorganization Court. It is not operating any rail service, but several of its lines have been leased or sold to others. The largest transaction approved by the Commission in the past year involved the acquisition of 630 miles of Rock Island line between Salinas, KS and Dallas, TX.<sup>8</sup> This line is to be acquired by the Oklahoma, Kansas and Texas Rail Users Association, the State of Oklahoma and the Missouri-Kansas-Texas Railroad Company (MKT), and will be operated by the Oklahoma, Kansas and Texas Railroad Company (OKT), an MKT subsidiary. OKT had been providing interim operations over the line from May 1980 through the end of 1981, pursuant to temporary authority from the Commission; the joint acquisition project, which is subject to final approval by the Reorganization Court, will enable the permanent preservation of service over this major Rock Island line. For additional information on this transaction see the portion of this chapter on *Exemptions*.

Finally, the Commission approved two plans for reorganization of the M&E.<sup>9</sup> Both plans provide for the acquisition and operation of the line by new companies.

## Mergers and Consolidations

The Commission was very active in the area of railroad consolidation during fiscal 1982. Four major rail consolidations and one minor rail consolidation were adjudicated; a major shift in Commission policy on imposition of traffic protective conditions in consolidation cases was announced; and final rules governing informational requirements in consolidation applications were adopted.

In March 1982, the Commission approved control of the Norfolk and Western Railway Company and the Southern Railway System by Norfolk Southern Corporation, a newly-formed, noncarrier holding company.<sup>10</sup> The Commission found that the proposal offered opportunities for significantly improved routings as well as improved car utilization and terminal consolidations. The ICC also found that the consolidation would not tend to lessen transportation competition in any relevant market. The new system will be in a position to provide greater competition to the existing CSX Corp. and greater competition between railroads and other forms of transportation.

The Norfolk Southern system will extend from Chicago to Florida and from Norfolk to Kansas City. It will serve Atlantic, Gulf, Great Lakes and Mississippi River ports as well as points in 21 States, the District of Columbia and the Canadian Province of Ontario. The combined system will operate approximately 18,000 miles of railroad.

The Commission's decision in this major rail consolidation case was issued more than a year in advance of

<sup>8</sup> Finance Docket No. 29923—*Acquisition of a Rail Line of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee)—Between Fort Worth and Dallas, TX, et al.* (not printed), decided June 1, 1982. The Commission approved the acquisition by the Users Association and MKT; it found that the State of Oklahoma's acquisition did not require Commission approval because it was an acquisition by a state of a line approved for abandonment and therefore already exempted from regulation.

<sup>9</sup> Finance Docket No. 28691 (Sub-No. 4), *Morristown and Erie Railroad Company—Reorganization Plans* (not printed), decided May 20, 1982.

<sup>10</sup> *Norfolk Southern Corp.—Control—Norfolk & W. Ry. Co.*, 366 I.C.C. 171 (1982).

the statutory deadline of July 2, 1983. No appeals were filed and the transaction was consummated on June 1, 1982.

During the year the Commission issued two decisions approving railroad acquisitions by Guilford Transportation Industries, Inc. (Guilford),<sup>11</sup> a nonrailroad holding company. In April, the Commission approved Guilford's acquisition (for \$24.3 million cash) of the bankrupt Boston & Maine Corporation (B&M).<sup>12</sup> The decision cleared the way for Guilford, which acquired the Maine Central Railroad in 1981, to establish a new end-to-end rail system in five Northeastern states. The decision in this proceeding is under judicial review.<sup>13</sup>

The B&M consolidation will create a new single line system from points in Maine west to Mechanicville, NY, and will create a strengthened, all United States route in competition with the existing Canadian routes of the Canadian Pacific and Canadian National Railroads. The primary public benefit of this consolidation is the emergence of the Boston & Maine Railroad from reorganization as part of a potentially strong, unified rail network capable of meeting New England's unique shipping needs.

In July, in the second Guilford case, the Commission approved the acquisition of control by Guilford of the 1,700 mile Delaware & Hudson Railway Com-

pany (D&H) for \$500,000 cash.<sup>14</sup> Guilford will acquire all of the outstanding stock of the D&H from Dereco, Inc., a subsidiary of the Norfolk and Western Railway Company.

The decision will allow Guilford to establish a 3,830-mile rail system stretching from Delson, Canada near Montreal and points in Maine, west to Buffalo, NY and south to Washington, D.C., serving nine States and one Canadian Province. The addition of D&H to the system will complement the all-United States option for shippers moving traffic between New England and the Midwestern United States. More importantly, the consolidation will greatly improve the prospects for D&H's survival and will allow it and other Guilford system carriers to compete with Conrail and other carriers moving traffic in New England.

The Commission emphasized that the Guilford acquisitions<sup>15</sup> represent a private industry solution for the problems of D&H and B&M—a solution that will be achieved with private funding and which will alleviate the need for continuing Federal subsidies to D&H. Substantial rehabilitation of D&H's facilities and affiliation with B&M and Maine Central also will allow D&H to improve service to shippers.

Both Guilford proceedings were decided by the Commission under the Northeast Rail Service Act of 1981, which required final decisions in each case within 180 days of filing.

In September, the Commission announced its approval of the fourth major rail consolidation of the year—the

<sup>11</sup> Guilford's sole stockholder is Timothy Mellon.

<sup>12</sup> *Guilford Transp. Industries, Inc.—Control—B & M Corp.*, 366 I.C.C. 294 (1982).

<sup>13</sup> Five parties filed appeals in the United States Court of Appeals for the District of Columbia Circuit: Canadian National Railway Company (No. 82-1668), the State of Vermont (No. 82-1578), Canadian Pacific Ltd. (No. 82-1501), Providence and Worcester Railroad Company (No. 82-1523) and the Lamoille Valley Railroad Company (No. 82-1498).

<sup>14</sup> *Guilford Transp. Industries, Inc.—Control—D&H Ry. Co.*, 366 I.C.C. 396 (1982).

<sup>15</sup> Guilford's acquisition of the D&H is contingent on winning final approval of its acquisition of B&M. The D&H proceeding is under review in *Canadian Pacific, Ltd. v. U.S. and I.C.C.*, No. 82-1954 (D.C. Cir., 1982).

consolidation of the Union Pacific (UP), Missouri Pacific (MP) and Western Pacific (WP) railroads.<sup>16</sup> Again the Commission emphasized its endorsement of a private sector proposal that will enhance efficiency and competition while providing improved service to shippers.

The Commission observed that the UP-MP-WP consolidation represents another major step in the restructuring and revitalization of the nation's railroad system, as was envisioned by Congress in the Railroad Revitalization and Regulatory Reform Act of 1976, and the Staggers Rail Act of 1980. The resulting new railroad will stretch over 22,000 miles through 21 states from the Pacific Coast to the Mississippi River and Gulf Coast.

In addition to the public benefits expected to accrue from this transaction, the Commission found that it posed competitive problems in some affected transportation markets. Various conditions designed to ameliorate the anti-competitive consequences were imposed as part of the Commission's approval. These conditions include approval of trackage rights for the Denver and Rio Grande Western Railroad between Pueblo, CO and Kansas City, MO; trackage rights for Missouri-Kansas-Texas Railroad extending generally from Kansas City to Omaha and Lincoln NE, and to Topeka, KS; and trackage rights for the St. Louis Southwestern Railway (a subsidiary of the Southern Pacific Transportation Company) between Kansas City and St. Louis, MO. The Commission also voted to remove the Bieber Route conditions which were

imposed on the Burlington Northern in the Northern Lines Merger.<sup>17</sup>

The Commission's formal decision in the UP-MP-WP consolidation, based on a record containing over 700 exhibits and over 25,000 pages of transcript, was issued on October 20, 1982.

In December 1981, the Commission approved Southern Railway's purchase of the Kentucky & Indiana Terminal Railway Company, a Class III rail carrier.<sup>18</sup> This proceeding was decided under the standard of 49 U.S.C. 11344(d) which limits the scope of review of a transaction not involving two or more Class I railroads. The Commission must approve such transactions unless they would result in a substantial lessening of competition.

During the year the Commission also disposed of two rulemaking proceedings affecting the area of rail consolidations. In March, the Commission found that the so-called "DT&I conditions",<sup>19</sup> which had been routinely imposed in railroad consolidation proceedings since 1950, were anticompetitive and contrary to the public interest.<sup>20</sup> These conditions had been imposed in an attempt to lessen the impact of consolidations on nonapplicant railroads and the public. The Commission found that the standard conditions often prevented the realization of benefits from rail consolidations, and all DT&I conditions imposed in past

<sup>17</sup> *Great Northern Pac.—Merger—Great Northern*, 331 I.C.C. 228 (1967).

<sup>18</sup> Finance Docket No. 29690, *Southern Railway Company—Purchase—Kentucky & Indiana Terminal Railway Company* (not printed), decided December 8, 1981.

<sup>19</sup> In *Detroit, T. & I.R. Co., Control*, 275 I.C.C. 492, (1950) a standard set of traffic protective conditions were developed and, until recently, were imposed routinely in all rail consolidation proceedings.

<sup>20</sup> *Traffic Protective Conditions*, 366 I.C.C. 112 (1982).

<sup>16</sup> *Union Pacific—Control—Missouri Pacific; Western Pacific*, 366 I.C.C. 459 (1982).



proceedings were revoked unless the parties to those proceedings appear and demonstrate a public interest in continuing the conditions. The Commission stated its intent not to impose routinely such conditions in the future. The implementation of this rulemaking has been stayed pending judicial review.<sup>21</sup>

Finally, in February, the Commission adopted final rules<sup>22</sup> which will result in better use of Commission and carrier resources by reducing required information and avoiding lengthy and costly proceedings when unwarranted by the impact of consolidation proposals.

## Rates

The Commission continued its implementation of ratemaking related provisions of the Staggers Rail Act of 1980, including the cost of service standard. Specifically, the Commission is considering (1) modification of the cost recovery index;<sup>23</sup> (2) comments on the use of a productivity adjustment in determining quarterly rail cost adjustment factors<sup>24</sup>; (3) establishment of procedures for divisions of revenue proceedings<sup>25</sup>; (4) a methodology to set guidelines to determine maximum rail rates on coal<sup>26</sup>; (5) standards for rail

contracts<sup>27</sup>; (6) the most efficient procedures for parties to obtain cost information<sup>28</sup>; determining reasonably expected costs<sup>29</sup> and determining a rail carrier's cost of capital<sup>30</sup>; and (7) the use of the new Uniform Rail Costing System for calculating the cost recovery percentage.<sup>31</sup>

The Commission is reducing regulatory burdens in several areas. It is considering the continuing jurisdiction of states over intrastate rail transportation.<sup>32</sup> In this proceeding, the Commission has accepted state decisions to deregulate intrastate transportation in seven states and in the District of Columbia. It has assumed intrastate jurisdiction over six states.

The Commission has waived the collection of insignificant amounts and provided for streamlined special docket procedures.<sup>33</sup> The Commission is also considering whether to increase carrier flexibility in establishing car hire charges.<sup>34</sup>

<sup>21</sup> The proceeding is under review in *Detroit, Toledo and Ironton Railroad Company v. U.S.C. and I.C.C.*, No. 82-3251 (6th Cir., 1982).

<sup>22</sup> *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982).

<sup>23</sup> Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, 364 I.C.C. 841 (1981).

<sup>24</sup> Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures—Productivity Adjustment* (not printed), decided July 14, 1982.

<sup>25</sup> Ex Parte No. 322 (Sub-No. 1), *Revised Procedures for Divisions of Revenue Cases* (not printed), decided October 7, 1981.

<sup>26</sup> Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines—Nationwide*, 364 I.C.C. 360 (1980), and (not printed), decided December 16, 1981.

<sup>27</sup> Ex Parte No. 387, *Railroad Transportation Contracts*, 367 I.C.C. 9 (1982), and (not printed), decided October 23, 1980.

<sup>28</sup> Ex Parte No. 389, *Procedures for Requesting Rail Variable Cost and Revenues Determinations for Joint Rates Subject to Surcharge or Cancellation* (not printed), decided March 19, 1981.

<sup>29</sup> Ex Parte No. 402, *Reasonably Expected Costs*, 365 I.C.C. 819 (1982), and (not printed), decided January 21, 1981.

<sup>30</sup> Ex Parte No. 415, *Railroad Cost of Capital—1981*, 365 I.C.C. 734 (1982), and (not printed), decided August 19, 1981.

<sup>31</sup> Ex Parte No. 399, *Cost Recovery Percentage* (not printed), decided March 19, 1982 and December 3, 1982.

<sup>32</sup> Ex Parte No. 388, *State Intrastate Rail Rate Authority—P.L. 96-448*, 364 I.C.C. 881 (1981).

<sup>33</sup> No. 37130 (Sub-No. 1), *Special Docket Proceedings—Waiver of Insignificant Amounts and Simplification of Procedures* (not printed), decided February 22, 1982.

<sup>34</sup> Ex Parte No. 344 (Sub-No. 5), *Zone of Reasonableness for Car Hire Charges*, 364 I.C.C. 299 (1980).

In recent decisions, the Commission reaffirmed its market dominance determinations,<sup>35</sup> and held down rates on a broad class of commodities.<sup>36</sup> It adopted rules permitting the electronic transmission and disposition of (1) freight bills, (2) loss and damage claims, and (3) overcharge, duplicate payment, or overcollection claims as an alternative to paper bills and claims when agreed to by the parties.<sup>37</sup> It is handling procedural issues related to Section 229 complaint cases.<sup>38</sup> Various individual adjudications relating to joint rates and route cancellations were handled<sup>39</sup> while others are pending.<sup>40</sup> The Commission has modified rules to allow the filing of contract rates between freight forwarders and rail and water carriers.<sup>41</sup>

## Joint Rate Surcharges and Cancellations<sup>42</sup>

Fiscal year 1982 marked the second year railroads were able to use the surcharge and joint rate cancellation provisions of the Staggers Rail Act.<sup>43</sup> The primary purpose of these provisions was to give carriers a mechanism to obtain quick relief from noncompensatory divisions of rates and to permit carriers to earn an adequate return from light density line service.

The provisions authorize individual carriers unilaterally to impose a surcharge or cancel a joint rate when the rate does not provide the carrier with 110 percent of its variable cost. Individual carriers also are authorized unilaterally to impose a surcharge on interline traffic originating or terminating on light density lines when the existing rates do not provide revenues adequate to cover 110 percent of the carrier's variable cost plus 100 percent of its reasonably expected costs of continuing to operate the line.

For purposes of reporting the extent of surcharge activity, the Commission counts as one surcharge an application of one or more surcharge amounts to a particular category of traffic as defined by the surcharge tariff. These categories may be as narrow as a

<sup>35</sup> Ex Parte No. 320 (Sub-No. 2), *Market Dominance Determination*, 365 I.C.C. 118 (1981).

<sup>36</sup> Ex Parte No. 394, *Cost Ratio for Recyclables—1980 Determination*, 364 I.C.C. 425 (1980), 365 I.C.C. 304 (1981).

<sup>37</sup> Ex Parte No. 263 (Sub-No. 3), *Electronic Transmission of Loss and Damage Claims* and Ex Parte No. 406, *Electronic Transmission of Freight Bills*, 365 I.C.C. 581 (1982).

<sup>38</sup> Ex Parte No. 421, *Complaints Filed Pursuant to the Savings Provisions of the Staggers Rail Act of 1980 (Section 229, Public Law 96-448)*.

<sup>39</sup> No. 38676, *Changes in Routing Provisions—Conrail—July 1981* (not printed), decided March 22, 1981; No. 38679, *Restructured Rates on Recyclables, O/T Iron or Steel Scrap, Conrail* (not printed), decided March 31, 1982; Nos. 38689 and 38689 (Sub-No. 1), *Restructured Rates on Grain and Grain Products, Conrail* (not printed), decided April 15, 1982.

<sup>40</sup> No. 38799, *Light Density Line Surcharge—Burnsville, Mo—Omaha, NE*; and No. 38742, *Interchange Provisions at Jacksonville, FL, SCL, and SRS*.

<sup>41</sup> Ex Parte No. 364 (Sub-No. 1), *Freight Forwarder Contract Rates*, 364 I.C.C. 413 (1980).

<sup>42</sup> This section fulfills the requirements of Section 217(c)(1) of the Staggers Rail Act of 1980 (P.L. 96-448) for the Commission to report in its Annual Report to Congress on the following concerning joint rate surcharges and cancellations: (a) the effect on shippers, ports, Class II and Class III rail carriers, railroad employees, etc., (b) the number of surcharges, revenue collected from them, surcharge cancellations, and the number of joint rate cancellations by the Consolidated Rail Corporation and all other rail carriers, and (c) operation of special remedies available to Class II and Class III rail carriers under Section 217.

<sup>43</sup> Section 10705a of Title 49, *United States Code*, introduced by the Staggers Rail Act, effective October 14, 1980.

single commodity moving between specified points or as broad as all interline traffic originating or terminating on a carrier's line. On this basis, the Nation's railroads filed 117 surcharges and negative surcharges that became effective during the year (see Appendix B, Table 15). While this activity represents an increase over last year's 114 surcharges, the number of carloads affected by these surcharges remains small, totaling less than 0.4 percent of carloads shipped. Estimated annual revenues associated with these surcharges and negative surcharge total \$13.6 million and \$(2.2) million, respectively, for a net total of \$11.4 million.

Of the surcharges filed, a majority were commodity oriented. Of these, 78 consisted of surcharges imposed on specific commodities to generate additional revenue while 15 constituted negative or allowance surcharges imposed presumably in response to surcharges imposed by other carriers. Principal commodities and commodity groups for which surcharges were imposed include paper products (Illinois Central Gulf Railroad), wine (Long Island Railroad), lumber or wood products (Long Island Railroad) and pulp, paper and allied products (Conrail).

Principal commodities for which allowance or negative surcharges were applied included soda ash (The Atchison, Topeka and Santa Fe Railway and Norfolk and Western Railway), coal (Detroit, Toledo and Ironton Railroad, Grand Trunk Western Railroad, and Hillsdale County Railway), pulpboard (Seaboard Coast Line Railroad, and Boston & Maine), and paper (Boston & Maine).

Twenty-four surcharges were applied on traffic originating or terminating on light density lines. Eighteen of these were imposed by Class II and Class III carriers. Estimated annual revenues to be generated by these surcharges total \$1.0 million.

Conrail continued to be the most active carrier applying surcharges, filing 17 new commodity and 17 revisions to surcharges imposed during the last fiscal year. Revenue estimates show that Conrail's surcharges will generate \$3.4 million in annual revenues. Most of Conrail's new commodity surcharges were applied on a broad, interterritorial basis which prompted "negative surcharge" responses from some of Conrail's connections. Conrail filed no surcharges on light density lines. This decline from last year's total of 37 reflects Conrail's use of the Northeast Rail Service Act of 1981 to gain relief from branch line losses.

The number of surcharges imposed by non-Conrail carriers more than doubled from last year's level of 44 as 61 commodity, 15 negative or allowance, and 24 light density line surcharges were applied. Of these 99 surcharges, most (82) involved interterritorial or nationwide application. The large increase resulted primarily from increased filings by Class I railroads which filed 59 surcharges compared to 100 during fiscal year 1981. Most active among these carriers were Illinois Central Gulf Railroad with 16 surcharges filed, Long Island Railroad with eight, Grand Trunk Western Railroad with six, and Boston & Maine with five. Revenues associated with non-Conrail surcharges total a net \$7.5 million annually, of which most resulted from surcharges applied by the Long Island Railroad.

The Commission identified 24 joint rate cancellations during fiscal year 1982.<sup>44</sup> Of these, Conrail initiated one.

The Commission interprets the cancellation provisions of Section 10705a as generally providing carriers with the absolute right to cancel joint rates when the division of revenue affords a carrier a revenue to variable cost ratio of less than 110 percent. When the cancelling carrier's revenue to variable cost ratio exceeds that level, the Commission will consider cancellations filed under Section 10705a under the public interest standard of Section 10705(e) which historically has governed joint rate cancellations. Because the revenue to variable cost ratios for many joint rates subject to cancellation exceeded 110 percent, 22 of the 24 cancellations during the fiscal year were decided under Section 10705(e).

Due to the relatively limited number of surcharges and cancellations, shippers, ports, Class II and Class III rail carriers and railroad employees have been only minimally affected by carrier actions. However, for parties that have been subjected to surcharges or joint rate cancellations, the Commission's experience from recent cases<sup>45</sup> and from comments received in a recent

study of joint rates<sup>46</sup> indicates that while opposition may be substantial, most affected parties are able to adjust by using or developing routes not subject to surcharges or cancellations or by diverting traffic to other modes.

Affected shippers and connecting carriers may seek relief by submitting revenue and cost data to the Commission showing that the existing rate produces revenues that are equal to or greater than: (1) 110 percent of its variable cost, or (2) such lesser percent of the carrier's variable cost as it earns over a competing through route to which application of the joint rate has not been cancelled or over a competing single line route. The revenue to variable cost calculations are made by the ICC's Bureau of Accounts from movement information submitted by these shippers and carriers.

During fiscal year 1982, the Bureau received 79 requests covering 6,876 movements for variable cost calculations from shippers or carriers affected by surcharges.<sup>47</sup> This level of activity represents a marked decline from last year's 229 requests and 21,690 movements. The decline is attributed in part to provisions in Conrail's tariffs that allow shippers and connecting carriers to effect upon request rollbacks and cancellations of certain surcharges. These "automatic" rollbacks and cancellations are based on revenue to variable cost calculations performed by Conrail and are included in its surcharge tariffs. Most shippers and carriers affected by Conrail's surcharges

<sup>44</sup> Cancellations brought before the Suspension Board.

<sup>45</sup> *Family Lines Rail System—Unilateral Cancellation of Joint Rates*, 365 I.C.C. 464 (1981), 365 I.C.C. 569 (1982); *Cancellation—Single-Factor Joint Rates on Grains*, 365 I.C.C. 804 (1982); *Restructured Rates on Grain and Grain Products*, Conrail, 365 I.C.C. 635 (1982), (Grain Restructuring); *Restructured Rates on Recyclables—Conrail*, 365 I.C.C. 596 (1982), (Recyclables); *Changes in Routing Provisions—Conrail*, July 1981, 365 I.C.C. 753 (1982); *Joint Line Cancellations—Soda Ash—UP R. Co.*, 365 I.C.C. 951 (1982).

<sup>46</sup> Ex Parte No. 427, *Joint Rates Study, A Report to Congress Pursuant to Section 217 of the Staggers Rail Act of 1980*, served November 18, 1982.

<sup>47</sup> The Bureau also received 45 requests covering 5,315 movements from shippers and connecting carriers affected by joint rate cancellations.



appear satisfied with its calculations and have not sought relief through the Commission.

Other reasons for the decline in requests include: greater familiarity with the Commission's costing methodology and policy toward surcharges on the part of shippers and connecting carriers and availability of acceptable transportation alternatives. A total of 15 surcharges were brought before the Commission's Suspension Board during fiscal year 1982 down from last year's 35. None of these cases resulted in a surcharge being cancelled or reduced.

The Act also includes special provisions for Class II and III carriers subjected to surcharges or cancellations.<sup>48</sup> These provisions protect carriers against surcharges or cancellations that adversely affect competition, affect the only remaining route available to a carrier, and produce an unreasonable difference in existing rates. The Commission has said in two cases<sup>49</sup> that general allegations would not automatically warrant rescission of a surcharge or cancellation, that the resolution of issues would be based on a balancing of interests to determine the overall public interest, that subsections (i) and (k) merely require investigation, and that subsection (j) merely confers standing if certain showings are made. Those cases were ultimately decided under the public interest standard of Section 10705(e) and not under Section 10705a. The provisions intended to protect Class III carriers were given significant weight

in the balancing of interests required under Section 10705(e), and the Commission found the rate cancellations lawful under that standard. But the Commission was split as to whether to grant relief to these carriers under Section 10705a, and thus there was no decision on that point. The Class III carriers in those proceedings have challenged the ICC's decision in court,<sup>50</sup> and those cases were pending at the end of the fiscal year.

### Construction, Acquisition, and Operation

In February the Commission issued final rules revising its regulations for obtaining authority to construct, acquire or operate a line of railroad.<sup>51</sup> The new regulations substantially streamline application procedures and eliminate the filing of information which the Commission has found to be redundant or unnecessary to its decisional process. The regulations also codify procedures for obtaining a (1) designated operator certificate under which a new operator may provide service over former Penn Central lines not transferred to Conrail and (2) modified certificate under which a carrier may operate over an abandoned rail line that has been acquired by a state or state agency.

In the past fiscal year, the Commission approved two major proposals for the construction and operation of rail lines to haul coal. In January, the Com-

<sup>48</sup> Sections 10705a(i), (j), and (k) for Class III carriers and (l) for Class II and III carriers.

<sup>49</sup> *Restructured Rates on Grain and Grain Products, Conrail*, 365 I.C.C. 635 (1982), *Restructured Rates on Recyclables—Conrail*, 365 I.C.C. 596 (1982).

<sup>50</sup> *National Association of Recycling Industries, Inc., v. ICC*, U.S.C.A., D.C. Cir. No. 82-500, and *New York Railway and Brooklyn Eastern District Terminal v. United States*, U.S.C.A., 2nd Cir., No. 82-4092.

<sup>51</sup> Ex Parte No. 392, *Application Proc.—Construct, Acq. or Oper. R. Lines*, 365 I.C.C. 516 (1982). These regulations implement the provisions of 49 U.S.C. 10901.

mission approved the construction by Star Lake Railroad Company (a wholly-owned subsidiary of the Atchison, Topeka and Santa Fe Railway Company) of an 82-mile rail line in New Mexico.<sup>52</sup> The Commission made this determination after considering the public need for construction and analyzing possible adverse environmental impacts, including harm to scenic and historic areas in the Chaco Mesa region of New Mexico.

In March, the Commission approved the construction and operation of a 27.4-mile line in Niagara County, NY, enabling Somerset Railroad Corporation to serve a new coal-fired electric generating plant.<sup>53</sup> The railroad is a wholly-owned subsidiary of the New York State Electric and Gas Corporation. The route certified was chosen from a number of alternative proposed routes because the harm to the environment was comparatively slight. The loss of some productive farmland was outweighed by the need for economic transportation of coal for the production of electricity.

There is also an ongoing series of cases concerning construction and operation of a rail line to serve the coal rich Powder River Basin in Wyoming. In 1976, the Commission authorized the joint construction of a line by the Burlington Northern Railroad Company (BN) and the Chicago and North Western Transportation Company (CNW). The Commission decided not to authorize the construction of two lines into the basin in order to minimize adverse environmental impacts. Joint

operation was found to be essential to allow the two competing carriers to originate coal movements in the basin. The project was constructed and operated by the BN. In the past year, the Commission issued several decisions concerning what price CNW should pay BN for its share of construction costs.<sup>54</sup> However, the two carriers still were unable to agree on a fair buy-in price. Consequently, the Commission will prescribe a fair buy-in price in a decision to be issued in fiscal year 1983.

In May, the Commission authorized Tradewater Railway Company, a wholly-owned subsidiary of Pyro Energy Corporation, to lease and operate 87.25 miles of rail line in western Kentucky.<sup>55</sup> The line had previously been abandoned by the Illinois Central Gulf Railroad Company and operated by Tradewater under a temporary exemption granted by the Commission. Approval of Tradewater's permanent operation will preserve rail service to shippers.

The Commission also approved a number of applications involving the purchase and operation of portions of lines owned by the bankrupt Chicago, Milwaukee, St. Paul & Pacific Railroad Company and Chicago Rock Island and Pacific Railroad Company. For additional information, see the *Reorganizations* portion of this chapter.

<sup>52</sup> Finance Docket No. 28272 *et al.*, *Star Lake Railroad Company—Rail Construction and Operation in McKinley County, New Mexico* (not printed), decided January 28, 1982.

<sup>53</sup> *Somerset R. Corp.—Constr.—Niagara County, NY*, 366 I.C.C. 144 (1982).

<sup>54</sup> Finance Docket No. 29066, *Chicago and North Western Transportation Company Approval of Terms of Construction, Ownership and Operation of a Line of Railroad in Campbell and Converse Counties, Wyoming* (not printed), decided May 14, 1982 and August 18, 1982.

<sup>55</sup> Finance Docket No. 29807, *Tradewater Railway Company—Lease and Operation of Certain Lines of Railroad in Union, Webster, Crittenden and Caldwell Counties, KY* (not printed), decided April 23, 1982.

## Abandonments

There was a substantial increase in abandonment activity during fiscal year 1982. This increase resulted in large part from the enactment of the Northeast Rail Service Act of 1981 (NERSA) on August 13, 1981. As a result of NERSA, the Consolidated Rail Corporation (Conrail) was given great leeway to abandon rail properties. Under NERSA, the Commission is required to grant an abandonment application, unless an offer of financial assistance to purchase or subsidize the line is filed within 90 days of the date the application is filed. On November 25, 1981, the Commission adopted final procedures for processing NERSA abandonments.<sup>56</sup>

Since the enactment of NERSA, Conrail has filed over 300 abandonment applications involving approximately 3,000 miles of track. In fiscal year 1982 alone, 269 applications involving 2,360 miles were filed; 252 applications involving 1,983 miles were granted. Another 30 cases involving almost 570 miles were dismissed because purchase agreements were entered into. Finally, agreements to subsidize nine Conrail lines involving almost 45 miles also were entered into.

The Commission also issued decisions authorizing the abandonment of 119 non-Conrail lines involving almost 3,100 miles of track. Of those, 44 involving 506 miles were not protested; 34 involving 906 miles were not investigated because of limited opposition; and 41 involving 1,688 miles were decided after oral hearing or after the submission of written verified statements. In addition, the Commis-

sion recommended to bankruptcy courts the abandonment of 14 lines involving 235 miles. The Commission denied two abandonments involving 47 miles.

In other abandonment activity, the Commission issued a decision updating the rate of return to be used in computing carrier opportunity costs.<sup>57</sup> The Commission found that a carrier should recover a 16.7 percent return on the net liquidation value of its assets invested in the line to avoid incurring an opportunity cost.

The Commission also decided to issue a notice of proposed rulemaking which would modify many of its existing abandonment regulations.<sup>58</sup> The most significant changes dealt with the computation of the cost of capital and equipment costs. The proposed changes had been required by either court actions or earlier Commission decisions.

In its continuing effort to provide assistance to the public, the Commission published a brochure to assist interested parties in evaluating the feasibility of shortline railroad operations over abandoned trackage.<sup>59</sup> This guide addresses the critical factors of track and plant conditions, existing and potential traffic, operating costs, rates/divisions, labor costs, management expertise, transportation competition and funding. Because of the increased abandonment activity in recent years, this brochure has been very popular with shippers, communities, and states that are con-

<sup>56</sup> *Conrail Abandonments Under NERSA*, 365 I.C.C. 472 (1981).

<sup>57</sup> *Abandonment of R. Lines—Use of Opportunity Costs*, 365 I.C.C. 902 (1982).

<sup>58</sup> *Revision of Abandonment Regulations* (not printed), decided September 28, 1982.

<sup>59</sup> *Guidelines for Evaluating the Feasibility of Short Line Operations*, prepared by the Rail Services Planning Office, August 1982.



templating the takeover of rail operations to preserve service they consider essential.

Additionally, at the request of Members of Congress, the Commission's Rail Services Planning Office participated in seminars in Montana and North Dakota concerning increased abandonment activity by the Burlington Northern Railroad. These sessions provided the public with an understanding of the new abandonment procedures, timetables adopted since the Staggers Rail Act of 1980, and informed them of their rights to participate in an abandonment proceeding. The Commission also provided assistance to Members of Congress, shippers, state and local governments, and communities during the expedited abandonment process in 1982 in which Conrail applied for abandonment of approximately 2,800 miles of lines.

## Feeder Railroad Development Program

The Feeder Railroad Development Program authorizes the Commission to require a railroad to sell a rail line to shippers or other persons under certain circumstances. In July 1982, the Commission proposed modifications of its existing regulations governing this program in order to streamline and clarify the current procedures.<sup>60</sup> The proposed rules also eliminate the current requirement that feeder line applicants file a notice of intent 90 days prior to the filing of the feeder line application. Under certain circumstances, the Commission has found

that the railroads were able to frustrate the feeder line program by taking certain actions during the 90 day pre-application period.<sup>61</sup> Final rules are under preparation and are expected to be issued in fiscal year 1983.

During fiscal year 1982, the Commission issued its first decision addressing the merits of an application filed under the feeder line program.<sup>62</sup> In that case, two parties filed competing applications to acquire the same Conrail line. Our decision found that both applicants were financially responsible and able to provide adequate rail service. We directed Conrail to negotiate with either of the two applicants. Conrail and Indiana Hi-Rail Corporation subsequently entered into a contract for the sale of the line and it was transferred. No other feeder line applications were filed during fiscal year 1982, but approximately 12 notices of intent to file feeder line applications were filed.

## Exemptions

During fiscal year 1982, the Commission actively employed its rail exemption authority to further reduce unnecessary regulation. With respect to financial transactions alone, the Com-

<sup>60</sup> Ex Parte No. 395 (Sub-No. 1), *Feeder Railroad Development Program* (not printed), decided July 23, 1982, 47 Federal Register 33993 (August 5, 1982).

<sup>61</sup> See Docket No. AB-43 (Sub-No. 85F), *Illinois Central Gulf Railroad Company—Abandonment—Between Cisco and Green's Switch in Mason and Platt Counties, IL* (not printed), decided May 4, 1982, and Finance Docket No. 29813, *Cisco Cooperative Grain Company Feeder Line Acquisition—Illinois Central Gulf Railroad Company Line Between Cisco and Green's Switch, IL* (not printed), decided May 4, 1982; and Finance Docket No. 29875, *Prairie Central Railway Company—Feeder Line Acquisition—Illinois Central Gulf Railroad Company Line Between Galatra and El Dorado, IL* (not printed), decided August 31, 1982. Both notices of intent were dismissed for lack of jurisdiction.

<sup>62</sup> *Indiana Hi-Rail Corp.—Feeder Line Acq.*, 366 I.C.C. 42 (1981).

mission granted over 130 exemptions of individual rail transactions where the transportation or public impact was minimal or regulation was unnecessary to protect shippers from abuses of market power. This was twice the number of exemptions granted during fiscal year 1981 relating to a range of transactions including acquisitions, abandonments, new operations, lease and trackage rights agreements and securities issuances.

A significant individual exemption involved the operation and control of 630 miles of line owned by the bankrupt Chicago, Rock Island and Pacific Railroad Company.<sup>63</sup> The Commission concluded that requiring the operator, Oklahoma, Kansas and Texas Railroad Company (OKT), to file an application for approval of its operation under the criteria of 49 U.S.C. 10901 was unnecessary. In a prior proceeding, the Commission had the opportunity to examine the same operating proposal when it considered OKT's temporary lease and operation of the line. The agency found it to be in the public interest. Earlier, the Commission analyzed the competitive implications of OKT being controlled by the Missouri-Kansas-Texas Railroad Company (MKT). MKT's lines parallel those to be operated by OKT. Nonetheless, the Commission concluded that the control relationship would not lessen competition or enable the carriers to abuse whatever market power they might gain. The two carriers would not be competing for the same traffic, there would be substantial competition from

other rail carriers and motor carriers, and local shippers would own a major portion of the Rock Island line and finance OKT's initial operations. Furthermore, since the line was largely without rail service, OKT's resumption of service would increase rather than reduce competition by giving shippers an additional transportation alternative.

The Commission's regulations exempt certain classes of transactions from review. One of these classes includes transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes or changes in the competitive balance with other carriers.<sup>64</sup>

The Commission previously had applied this class exemption to mergers of a subsidiary into a parent company where the subsidiary was 100 percent owned by the parent. In December 1981, the Commission for the first time extended the class exemption to a merger where the subsidiary was less than wholly-owned by the parent corporation.<sup>65</sup>

The Commission also applied its exemption authority to the consolidation of a Class I and Class III rail carrier<sup>66</sup> which normally would require authorization under the "competitive impact" standard added by the Staggers Rail Act of 1980. The Soo Line Railroad Company (Soo) proposed to acquire all the outstanding capital stock of the Minneapolis, Northfield and Southern Railway, Inc. (MNS). In exempting the

<sup>63</sup> Finance Docket No. 29923, *Acquisition of a Rail Line of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Between Fort Worth and Dallas, Texas* (not printed), decided June 1, 1982.

<sup>64</sup> 49 CFR 1111.2(d)(3).

<sup>65</sup> Finance Docket No. 29757, *Colorado and Southern Railway Company—Merger into Burlington Northern Railroad Company—Exemption and Request for Determination of Fairness* (not printed), decided December 28, 1981.

<sup>66</sup> *Soo Line R. Co.—Petition for Exemption*, 366 I.C.C. 286 (1982).

transaction, the Commission found that it would have limited impact on competing carriers and would benefit shippers. Soo, a financially larger and healthier carrier, would provide MNS shippers with a much larger fleet of equipment and help ensure long-term availability of service on the MNS line.

In addition to granting the individual exemptions, the Commission instituted rulemakings to consider exempting two classes of transactions or services. In March, the Commission proposed to exempt abandonment of rail lines which have been out of service for at least two years.<sup>67</sup> In September, it proposed to exempt written trackage rights agreements (except those filed as responsive applications in rail consolidation proceedings).<sup>68</sup> Because the Commission, in the past, has analyzed on a case-by-case basis numerous requests to exempt the involved transactions and services and found them to satisfy the exemption criteria, the Commission said that exemption of these matters as a class may be appropriate. Comments on the proposed class exemptions are being considered. Final rules should be issued in fiscal year 1983.

The Commission has authorized or proposed various exemptions in the ratemaking area. The Commission exempted hops<sup>69</sup> and a movement of iron

chloride.<sup>70</sup> It authorized exemptions from certain notice requirements<sup>71</sup> and provisionally exempted a commuter service from certain notice and posting requirements.<sup>72</sup> Under consideration is a proposal to exempt a commuter service in northern Indiana.<sup>73</sup>

Also under consideration are proposals to exempt movements in rail boxcars having certain Association of American Railroads (AAR) equipment type designations,<sup>74</sup> storage leases,<sup>75</sup> removal of certain protective service regulations,<sup>76</sup> iron chloride,<sup>77</sup> export coal,<sup>78</sup> and an exemption from the long and short haul provisions of the Interstate Commerce Act.<sup>79</sup> The Commis-

<sup>67</sup> Ex Parte No. 346 (Sub-No. 9), *Rail Exemption of a Particular Service Under 49 U.S.C. 10505—Transportation of Liquid Iron Chloride Moving from Edge Moor, DE to Baltimore, MD* (not printed), decided October 5, 1982.

<sup>71</sup> NO. 38821, *New York, Susquehanna & Western Railway Corporation Exemption for Surcharges* (not printed) decided April 15, 1982, and Ex Parte No. 387 (Sub-Nos. 59 to 289), *Exemption for Contract Tariffs to be filed on One Day's Notice* (not printed), decided November 10, 1981 to September 19, 1982.

<sup>72</sup> Ex Parte No. 346 (Sub-No. 11), *Chicago and North Western Transportation Company, Petition for Exemption—Tariff Notice and Posting Requirements* (not printed), decided June 9, 1982.

<sup>73</sup> No. 38699, *Chicago South Shore & South Bend Railroad—Petition for Review of Decision of Northern Indiana Commuter Transportation District* (not printed), decided November 3, 1981.

<sup>74</sup> Ex Parte No. 346 (Sub-No. 8), *Exemption from Regulation—Box Car Traffic* (not printed), decided January 22, 1982 and June 18, 1982.

<sup>75</sup> Ex Parte No. 346 (Sub-No. 12), *Petition to Exempt Shortage Leases of Norfolk and Western* (not printed), decided March 25, 1982.

<sup>76</sup> Ex Parte No. 137, *Contracts for Protective Service* (not printed), decided June 11, 1982.

<sup>77</sup> Ex Parte No. 346 (Sub-No. 9A), *Liquid Iron Chloride* (not printed), decided October 5, 1982.

<sup>78</sup> Ex Parte No. 346 (Sub-No. 7), *Rail General Exemption Authority—Export Coal* (not printed), decided August 18, 1981.

<sup>79</sup> Ex Parte No. 346 (Sub-No. 13), *Soo Line Railroad Company—Petition for Exemption from the Provisions of 49 U.S.C. 10726—Long and Short Haul Transportation*.

<sup>68</sup> Ex Parte No. 274 (Sub-No. 8), *Exemption of Out of Service Rail Lines* (not printed), decided March 18, 1982, 47 Federal Register 13538 (March 31, 1982).

<sup>69</sup> Ex Parte No. 282 (Sub-No. 9), *Railroad Consolidation Procedures—Trackage Rights Exemption* (not printed), decided September 8, 1982, 47 Federal Register 40668-70 (September 15, 1982).

<sup>69</sup> Ex Parte No. 346 (Sub-No. 10), *Rail General Exemption Authority—Hops*, 365 I.C.C. 701 (1982).

sion also is reassessing its need for rules pertaining to the maintenance of demurrage and detention records.<sup>80</sup>

## Passenger Service

The Commission's authority over Amtrak's adequacy of service was repealed by the Amtrak Reorganization Act of 1979,<sup>81</sup> resulting in the elimination of the ICC's adequacy of service regulations.<sup>82</sup> The ICC retains authority to order a railroad to provide services or the use of its track or facilities for Amtrak, and to set the terms and compensation for such use in the event Amtrak and private railroads or regional transportation authorities are unable to agree on these matters.

For example, in April the Commission ordered the Louisiana & Arkansas Railway Company (L&A) and its controlling company, the Kansas City Southern Railway Company, to provide Amtrak with services, tracks and facilities, including rights of access to tracks and facilities necessary to allow Amtrak to operate an inspection train between New Orleans and Baton Rouge, LA.<sup>83</sup> In the same month, the Commission affirmed that decision, finding that the inspection trip would not cause inconvenience and expense prejudicial to L&A's freight operations

and that L&A had significant advance notice of the inspection run.<sup>84</sup>

As part of the Commission's ongoing view of regulations, a rulemaking was instituted<sup>85</sup> in which the Commission proposed to modify its regulations regarding discontinuance and change of passenger train or ferry service under 49 U.S.C. 10907 and 10909. The proposed changes would eliminate unnecessary and redundant information requirements and streamline procedures, thereby allowing railroads more flexibility in their operations. Comments received from the public in this proceeding were being considered by the Commission at the end of the fiscal year.

In November 1981, the Commission granted a request by VIA Rail Canada, Inc. (VIA) to exempt its proposed discontinuance of the Maine portion of its "Atlantic Limited" passenger train service between Halifax, Nova Scotia and Montreal, Quebec.<sup>86</sup> Because the Canadian government had decided to stop subsidizing the operation, VIA would not have the funds to continue service. In these circumstances, the Commission concluded that an evidentiary hearing would be an unnecessary regulatory burden.

Auto-Trak Corporation ceased operations during 1981. As a consequence, this year the Commission's dismissed a pending petition of Auto-

<sup>80</sup> Ex Parte No. 285, *Maintenance of Records Pertaining to Demurrage, Detention, and Other Related Accessorial Charges by Rail Common Carrier of Property* (not printed), decided January 18, 1982.

<sup>81</sup> Public Law No. 96-73, 93 Stat. 537-558.

<sup>82</sup> 49 CFR Part 1124.1 et seq.

<sup>83</sup> Finance Docket No. 29890, *Amtrak and Kansas City Southern Railway Company and Louisiana & Arkansas Railway Company—Use of Tracks and Facilities and Establishing Just Compensation* (not printed), decided April 7, 1982.

<sup>84</sup> Finance Docket No. 29890, *Amtrak and Kansas City Southern Railway Company and Louisiana & Arkansas Railway Company—Use of Tracks and Facilities and Establishing Just Compensation* (not printed), decided April 27, 1982.

<sup>85</sup> Ex Parte No. 428, *Discontinuance or Change of Passenger Train or Ferry Service* (not printed), decided September 19, 1982, 47 Federal Register 41600 (September 21, 1982).

<sup>86</sup> Finance Docket No. 29746, *Via Rail Canada, Inc.—Exemption Discontinuance of Passenger Service* (not printed), decided November 2, 1981.



Train for modification of certain operating authority and revoked a related temporary exemption which had been issued.

At the request of the Southeastern Pennsylvania Transportation Authority (SEPTA), the Commission's Rail Services Planning Office completed a study of Conrail's operation of SEPTA's commuter service and made several recommendations for reducing the overall costs of SEPTA service.

The Northeast Rail Service Act of 1981 directed the Commission to determine an appropriate costing methodology for compensating Amtrak for the use of its trackage in the Northeast Corridor by commuter passenger and freight services. The Commission issued proposed and interim rules in order to develop an avoidable costing methodology to address this important compensation issue.<sup>87</sup> Final rules are expected early in fiscal year 1983.

The Commission also issued proposed regulations<sup>88</sup> prescribing the contents of notices to discontinue commuter service by the new Amtrak Commuter Services Corporation, which took over much of the commuter service on the Northeast Corridor on January 1, 1983.

Finally, during fiscal year 1982 designated Commission Agents in the Office of Compliance and Consumer Assistance issued (8) eight emergency orders which permitted Amtrak passenger trains already enroute to utilize

alternate routing, and prevented interruptions of rail passenger service. These orders are necessitated when one of the carriers with which Amtrak contracts to operate its passenger trains, cannot do so due to circumstances beyond its control, and where another routing exists over a connecting carrier.<sup>89</sup>

### Freight Car Service

The state of the Nation's economy was such that a surplus of rail freight cars that began in mid-1980 and continued in fiscal year 1981 rose to unprecedented levels in fiscal year 1982. Daily surpluses averaged 226,831 cars for the year.

On October 1, 1981, Class I carriers reported ownership of 1,121,736 cars; but by October 1, 1982, car ownership dropped to 1,059,006 cars—a reduction of 62,730 cars in the combined fleet of cars owned by Class I railroads. Freight car retirements in fiscal year 1982 totaled 69,879 cars. During this period, 7,149 cars were acquired. The entire car fleet of Class I, Class II, and Class III carriers, private car companies, and shippers consisted of 1,617,237 cars—a reduction of 60,031 cars in fiscal year 1982.

The carrying capacity of the average freight car installed in fiscal year 1982 was 91 net tons. This was an increase of 19 tons over cars installed in 1972. In this ten year period, there has been an average net gain in the carrying capacity of cars installed of 1.9 tons per car per year. The aggregate carrying capacity of cars installed in fiscal year 1982 was 650,559 tons; the capacity of those retired was 4,751,772

<sup>87</sup> Ex Parte No. 417, *Costing Methodologies for the Northeast Corridor, Commuter Service*; and Ex Parte No. 417 (Sub-No. 1), *Costing Methodologies for the Northeast Corridor, Conrail Freight Service* (not printed), decided January 18, 1982.

<sup>88</sup> Ex Parte No. 293 (Sub-No. 8), *Standards for Determining Commuter Rail Service Continuation Subsidies* (not printed), decided August 30, 1982.

<sup>89</sup> Rail Passenger Service Act of 1970, 45 U.S.C. 562(c).

tons, resulting in a net loss of 4,101,213 tons of aggregate capacity.

Freight carloadings during the fiscal year decreased 12.2 percent, or 2,630,000 cars below fiscal year 1981. Grain and coal traffic comprised 37.4 percent of all carloadings. While coal loadings increased by 6.5 percent, or 365,577 cars, grain loadings were down 10.2 percent, or 146,377 cars. Other major bulk commodity groups also showing a decrease were metallic ores, which were down 38.8 percent, and chemicals which declined by 17.2 percent. Trailer-on-flatcar/container-on-flatcar traffic increased by five percent, or 95,280 cars, and by three percent, or 102,831 trailers/containers.

The heavy export movement of grain and miscellaneous commodities to Mexico continued into fiscal year 1982. The car accumulation at border crossings necessitated the retention of the Embargo/Permit System for controlling the movement of cars across the border until mid-1982. By that time, through the combined efforts of the U.S. and Mexican governments and carriers, the excessive accumulation of U.S. railway cars in Mexico was reduced to normal levels. Port terminal elevators operated effectively in the handling of grain and caused no delay to the movement of grain cars. During fiscal year 1982, 138,019,760 tons of grain were exported compared with 140,610,507 tons in fiscal year 1981. The majority of the grain moved to export terminals was transported by rail. But barge lines and motor carriers also handled export grain shipments. Some 81.8 million tons of coal arrived at port

terminal facilities by rail for overseas movement during fiscal year 1982, compared with 69.9 million tons in fiscal year 1981. During fiscal 1982, there was no shortage of rail cars or excessive delay to rail equipment due to port congestion.

Class I railroads reduced their locomotive ownership from 27,846 on October 1, 1982 to 27,291 on October 1, 1982, a decrease of 555 units. As of October 1, 1982, Class I railroads had 72 diesel locomotives on order, including 30 multi-purpose and 25 freight units. Additionally, there were three rebuilt units on order, including one multi-purpose and two freight units.

During the fiscal year, 78 emergency orders were issued in conjunction with rail operations. A major part of this activity was to provide for the continuation of essential rail services, through service and rerouting orders, to shippers located on the lines of the bankrupt Rock Island and Milwaukee Railroads. Under the Rock Island Transition and Employee Assistance Act (RITEA), the Commission may authorize willing interim operators to provide temporary service to shippers during the bankruptcy process.

## Securities

Sixty-four applications to issue securities were filed by railroads in fiscal year 1982 along with seven requests for exemption from competitive bidding requirements.

Railroads were authorized to issue approximately 411,366 shares of stock for all purposes; \$577,800,000 principal amount of notes, and \$30,043,000 principal amount of bonds. They were also authorized to assume obligation and liability with respect to \$63,621,300 principal



amount of bonds; \$75,446,312 principal amount of notes and \$352,704,545 principal amount of equipment trust certificates.

The sharp increase in the principal amount of notes authorized to be issued compared to the previous fiscal year resulted from the proposed financing of part of the Powder River Basin coal project. A sharp decline has occurred in the principal amount of equipment trust certificates authorized to be issued compared to fiscal year 1981, when the principal amount totaled \$877,444,359. This largely reflects the surplus of railroad equipment that developed because of the slowdown in the economy.

In September, the Commission proposed to eliminate regulations pertain-

ing to loan guarantees. Authority to extend new loans to railroads under this program expired in 1963.<sup>90</sup> The Commission also proposed to eliminate regulations governing changes in the financial structure of railroads not in receivership or reorganization.<sup>91</sup> Only one railroad continues to have outstanding guaranteed loans under this program. Proceedings to modify railroad securities without resort to bankruptcy have been very rare. The Commission concluded that maintenance of separate regulations to cover these matters is no longer necessary. Any future applications for changes in financial structure will be handled on a case-by-case basis.

<sup>90</sup> Ex Parte No. 429, *Elimination and Modification of Certain Securities Regulations* (not printed), decided September 30, 1982, 47 Federal Register 44518 (October 7, 1982).

<sup>91</sup> *Id.*



# TRUCKING COMPANIES

## General Financial Condition

Paralleling the slowdown in the Nation's economic activity, the motor carrier industry experienced a significant drop in tonnage and income levels in fiscal year 1982. Although operating under a reduced regulatory environment created by the Motor Carrier Act of 1980, the slowdown in business activity overshadowed the carriers' abilities to take advantage of the new regulatory freedoms. A drop in available shipments and rate discounting by trucking companies competing for the remaining business led to the collapse in April of 1982 of Spector-Red Ball Company, one of the Nation's ten largest motor carriers. Several other large carriers and a number of small financially marginal carriers also have ceased operations, as the result of poor economic conditions.

Operating results for the 100 largest motor carriers for the 12 months ending June 30, 1982, reflect a period of financial difficulty for the industry. During this period traffic volume for the 100 largest motor carriers declined 8.3 percent from year-earlier levels. Total operating revenues rose 1.2 percent, to \$15.8 billion, due to rate increases, but operating expenses increased 3.7 percent. Consequently, total net income of these carriers plummeted 58 percent to \$157 million from \$370 million. The decrease in income also resulted in a substantial decline in return on equity (ROE). For the 12 months ending June 30, 1982, ROE for the 100 largest motor carriers was 5.39 percent compared to 14.10 percent for the 12 months ending June 30, 1981. Until business activity begins to pick up, the financial condition of the motor carrier industry likely will remain depressed.

Although some industry representatives argue that deregulation is the primary cause of the declining financial condition of the industry, it appears that motor carriers are experiencing the same financial problems that are affecting most segments of the economy. In a special report to Congress, the General Accounting Office concluded that "poor economic conditions, not regulatory reform, have been the likely cause of high unemployment in the trucking industry."<sup>1</sup>

An evaluation of the impact of the Motor Carrier Act of 1980 on the financial condition of the motor carrier industry can best be made when the economy recovers, since motor carrier earnings likely would improve with an economic upturn.

## Mergers and Unifications

The Motor Carrier Act of 1980 and 49 U.S.C. 11344 require the Commission to examine potential anti-competitive effects of pending acquisitions. This year the Commission approved two merger applications which were significant in terms of the transcontinental general commodities market.<sup>2</sup>

In order to further reduce the regulatory burden on motor carriers, the Commission removed the prohibition against motor carriers of property holding duplicate operating rights under common control.<sup>3</sup> The Commis-

<sup>1</sup> *Effects of Regulatory Reform on Unemployment in the Trucking Industry*, General Accounting Office, June 11, 1982.

<sup>2</sup> MC-F 14803, *Meridian Express Company, Inc.—Control—McLean Trucking Company; Pride Cargo Carriers, Inc.; and Salem Contract Carriers Inc.* (not printed), decided August 5, 1981; and MC-F-14871, *ABF Freight System, Inc.—Control and Merger—East Texas Motor Freight Lines, Inc.* (not printed), decided August 3, 1982.

<sup>3</sup> *Control of Duplicate Operating Rights*, 127 M.C.C. 780 (1981).

sion also determined that a corporate restructuring involving a transfer of duplicate authority within a corporate family is not a purchase and sale or "split" of duplicate authority.<sup>4</sup>

The Commission reaffirmed the continuing validity of the "single system" doctrine in considering a proposal by a noncarrier holding company to acquire control of another noncarrier holding company which controlled two independently operated motor carriers. The Commission concluded that the proposed acquisition was subject to the Commission's jurisdiction under 49 U.S.C. 11343 because the two carriers were not operationally integrated and thus did not constitute a single integrated transportation system. Since the proposal would result in the acquisition of control of two carriers, it would require Commission approval. Once jurisdiction was established, the Commission found that an independent voting trust could be used as a means of avoiding unauthorized control.<sup>5</sup>

Under the Bus Regulatory Reform Act of 1982, the Commission is authorized to exempt motor carriers of property from the merger, consolidation and acquisition of control provisions of 49 U.S.C. 11343, 11344, and 11345a. To implement this provision, the Commission issued proposed procedures for handling the exemptions under 49 U.S.C. 11343(e).<sup>6</sup> Under these procedures, the Commission may exempt a transaction if it finds

that examination of the transaction is not necessary to carry out the national transportation policy of 49 U.S.C. 10101 and either that the transaction is of limited scope or that examination is not needed to protect shippers from an abuse of market power.

## Securities

In fiscal year 1982, 44 applications and 13 petitions were filed for authority to issue securities or to modify prior authorities.

Motor carriers were granted authority to issue 6,281,195 shares of stock for all purposes; and \$79,939,312 principal amount of notes and bonds. They were also granted authority to assume obligation and liability with respect to \$47,187,578 of notes and bonds.

Continuation of high interest rates and declining operating profits curtailed investment in equipment and plant. Carriers still sought to reduce interest costs by leasing facilities constructed with funds obtained through guaranties of securities issued by public authorities.

Section 19 of the Bus Regulatory Reform Act of 1982 repealed 49 U.S.C. 11302, eliminating the Commission's jurisdiction over motor carrier securities.<sup>7</sup> Effective November 19, 1982, motor carriers are no longer required to obtain authority to issue securities or to modify prior authorities. In light of these changes, the Commission instituted a proposed rulemaking to implement the bus statute by removing all motor carriers from the requirements of Section 11302 and eliminating the need for circulars in public offerings by motor car-

<sup>4</sup> *Sims M. Transport Lines, Inc., of Indiana, Transferee*, 127 M.C.C. 786 (1982).

<sup>5</sup> *Reliance Group Holdings—Petition—Declaratory Order*, 366 I.C.C. 446 (1982).

<sup>6</sup> *Ex Parte No. 400 (Sub-No. 1), Procedures for Handling Exemptions Filed by Motor Carriers of Property Under U.S.C. 11343* (not printed), decided September 15, 1982, 47 Federal Register 42947 (September 29, 1982).

<sup>7</sup> Public Law No. 97-261.

riers.<sup>8</sup> The ICC also proposed to lift retroactively all restrictions previously imposed on motor carriers in connection with the issuance of securities or the assumption of obligations and liabilities. However, carriers must continue to comply with Commission requirements on the content and distribution of circulars with respect to public offerings which have already been authorized, but not yet implemented, unless further authorization is obtained from the Securities and Exchange Commission or other appropriate governmental authority.

Consistent with the repeal of the Commission's jurisdiction over motor securities, the Commission, in September 1982, proposed to remove the extraordinary financial conditions previously imposed on carrier and non-carrier holding companies of motor carriers and their motor carrier subsidiaries.<sup>9</sup> The Commission also proposed to remove noncarrier parents of motor carriers from the accounting, reporting and securities requirements of 49 U.S.C. 11348. The Commission reasoned that the public interest in protecting individual motor carriers from financial mismanagement has lessened as a result of the transformation of the motor carrier industry's competitive and regulatory environment. The ease of entry allowed by the Motor Carrier Act eliminates the Commission's prior concern that the

financial mismanagement of motor carrier subsidiaries would harm the shipping public relying on motor service.

The removal of the regulatory restraints currently imposed upon carrier and noncarrier parents of motor carrier subsidiaries will end unnecessary review of these financial transactions and will facilitate their operational and financial independence. It will also reduce their costs of operation and permit them greater access to needed investment capital. This will indirectly benefit shippers and consumers through lower transportation costs and improved service.

The Commission has also simplified its organizational structure by eliminating its Finance Board which had initial jurisdiction over securities issuances.<sup>10</sup> The repeal of Commission jurisdiction over the issuance of motor carrier securities reduced the volume of such applications and does not justify the retention of a separate board. Any remaining functions of the Finance Board have been transferred to Commission Review Boards.

## Rates

In a major decision,<sup>11</sup> the Commission denied a petition in which 15 motor carriers requested standards governing freight rate discounts given for volume and aggregate tenders.<sup>12</sup> In

<sup>8</sup> Ex Parte No. 429, *Elimination and Modification of Certain Securities Regulations* (not printed), decided September 30, 1982, 47 Federal Register 44518 (October 7, 1982).

<sup>9</sup> Ex Parte No. 442, *Removal of Extraordinary (Financial) Conditions Imposed Upon Carrier and Noncarrier Holding Companies and Their Motor Carrier Subsidiaries and Removal of Jurisdiction Imposed Under 49 U.S.C. 11348* (not printed), decided September 30, 1982, 47 Federal Register 44521 (October 7, 1982).

<sup>10</sup> Ex Parte No. 430, *Elimination of the Finance Board and Transfer of Its Remaining Function to the Review Boards* (not printed), decided September 30, 1982, 47 Federal Register 44516 (October 7, 1982).

<sup>11</sup> No. 38728, *Lawfulness of Volume Discount Rates—Motor Common Carrier*, 365 I.C.C. 711 (1982).

<sup>12</sup> This decision was affirmed in No. 38872, *Petition for Declaratory Order—ATA—Lawfulness of Discount Rates* (not printed), decided September 27, 1982.

denying the petition, the Commission noted that the primary goal of the Motor Carrier Act of 1980 is to promote efficiency through competition. The Commission explained that the requested proceeding would do more to stifle legitimate price competition than to eliminate predation or unreasonable discrimination.

In the same decision, the Commission found a need for a further proceeding concerning the issue of rates filed for the account of named shippers or locations. As a result, the agency instituted a proceeding<sup>13</sup> in which it proposed to eliminate the general prohibition against publishing rates restricted to named shippers, receivers and locations. The Commission stated that this rule conflicts with established standards for judging unlawful discrimination and that it may have an improper chilling effect on new rate filings. The proposed action would authorize this form of rate filing and would permit issues of unlawful discrimination raised in connection with such a tariff provision to be considered fully on the merits. If this proposal is approved, common carriers with broad territorial authority could publish rates tailor-made to each individual shipper served. The new ratemaking freedom could provide incentives for creative ratemaking and increased competition. It also could benefit shippers whose operations involve or invite economies not experienced by their competitors.

The Commission also held an open conference to initiate a proceeding which would provide an overview of

pricing changes which have evolved since the Motor Carrier Act of 1980. Discount rates are one of the pricing changes to be considered in that proceeding.

In a number of decisions, the Commission granted relief from tariff filing requirements to motor contract carriers. These decisions reflect a far-reaching change in the Commission's attitude toward contract carrier regulation. In one decision<sup>14</sup> granting such relief, the Commission imposed a condition pursuant to an offer from the petitioner that the contract carrier make available copies of its contracts, with rates attached, to interested parties. In a later decision<sup>15</sup> the Commission declined to impose this requirement where an offer to provide contracts was not made.

In another decision,<sup>16</sup> the Commission went even further. Although the petitioner filed a limited request, the Commission treated the request as one to exempt all of petitioner's contract operations and declined to condition its grant of relief on the petitioner's providing its contract rate schedule to interested parties, even though the petitioner offered to do so.

<sup>14</sup> Exemption proposed in No. 38703, *Gray Moving & Storage, Inc. Petition for Exemption from Tariff Filing Requirements* (not printed), decided October 29, 1981; Exemption finalized in No. 38703, *Gray Moving & Storage, Inc., Petition for Exemption from Tariff Filing Requirements* (not printed), decided February 18, 1982.

<sup>15</sup> Exemption proposed in No. 38749, *UTF Carriers, Inc.—Petition for Exemption from Filing Requirements Under 49 U.S.C. 10761(b)* (not printed), decided May 28, 1982; Exemption finalized in No. 38749, *UTF Carriers, Inc.—Petition for Exemption from Filing Requirements Under 49 U.S.C. 10761(c)* (not printed), decided June 25, 1982.

<sup>16</sup> No. 38828, *Three Way Corporation, Petition for Exemption from Tariff Filing Requirements* (not printed), decided June 25, 1982.

<sup>13</sup> Ex Parte No. MC-158, *Rates for a Named Shipper or Receiver* (not printed), decided June 18, 1982.



In the latter two decisions, the Commission opened the door to granting such relief on a much broader scale. Subsequently, two petitioners requested such broadened relief in the form of a rulemaking to consider eliminating the requirement that motor contract carriers of property file rate schedules. These petitions were pending as the fiscal year drew to a close.

In the motor freight classification area, the Commission's major proceeding<sup>17</sup> was pending at the end of the year. In an interim decision issued in that proceeding, the Commission found that the National Motor Freight Classification needed to be revised.

In another decision<sup>18</sup> intended to provide refinements in current costing techniques, the Commission adopted the national weight formula outlined in its 1977-78 *Motor Carrier Platform Handling Study* as a basis for allocating platform costs. The objective of this decision is to improve the quality of motor carrier costing procedures for all industry participants.

## Operating Rights

Implementation of the Motor Carrier Act of 1980 has been a continuing process involving the interpretation and refinement of recently adopted rules and policies as well as the reexamination of long-standing rules and policies. Pursuing its goal of promoting competitive and efficient transportation services, the Commission has continued to ease and expedite entry into the interstate motor carriage system and further the expansion and efficiency of operating rights.

The Commission emphasized that applications for operating authority do not necessarily require the testimony of supporting shippers. The Commission extended this ruling to cases involving the conversion of contract carrier authority to common carrier authority.<sup>19</sup> It also determined that the supporting testimony of a freight forwarder or similar transportation-arranging entity such as a property broker should be given credence.<sup>20</sup>

In the area of contract carriage, the Commission laid down new criteria for determining when a property broker can employ a contract carrier.<sup>21</sup> The Commission reiterated that grants of contract carrier authority to transport household goods are permissible and it examined and clarified the definition of a shipper's "distinct need" in the context of household goods transportation.<sup>22</sup>

The Commission made a number of significant decisions which affirm its commitment to a policy of granting broad, unencumbered operating authority. Grants of authority containing facilities limitations were found to be unacceptable.<sup>23</sup> It also was pointed out that the issuance of one-way authority is inconsistent with the Motor Carrier Act of 1980.<sup>24</sup>

<sup>17</sup> Ex Parte No. MC-98, *Investigation Into Motor Freight Classification*, 364 I.C.C. 906 (1981).

<sup>18</sup> *Platform Study—Classes I & II Motor Common Carriers, 1977-78*, 132 M.C.C. 851 (1982).

<sup>19</sup> No. MC-107522 (Sub-No. 7) *Peak Transfer Co., Inc., Conversion Application* (not printed), decided July 14, 1982.

<sup>20</sup> *Dixie Midwest Express, Inc. Ext.—General Commod.*, 132 M.C.C. 794 (1982), and *Cerco Enterprises, Inc., Common Carrier Application*, 132 M.C.C. 732 (1981).

<sup>21</sup> *Dixie Midwest, supra*.

<sup>22</sup> *Bekins Van Lines Co., Contract Carrier Application*, 132 M.C.C. 726 (1981).

<sup>23</sup> *Eckert Trucking Inc., Ext.—Building Materials*, 132 M.C.C. 829 (1982).

<sup>24</sup> No. MC-141700 (Sub-No. 5), *Kenneth Schuck Trucking, Inc., Extension—General Commodities* (not printed), decided July 2, 1982.

With regard to commodity authorizations, the Commission stressed its policy of employing reasonably broad commodity descriptions which must be supported by evidence of a need for the transportation of at least one of the subcategories of the involved commodity group.<sup>25</sup> The Commission also determined that the exclusion of designated commodities from specific, as opposed to general, commodities authorizations would contravene the mandate of the Motor Carrier Act of 1980 in that it would prevent the most efficient movement of many commodities and would unnecessarily limit competition.<sup>26</sup> Similarly, it was determined that both commodity and territorial exclusions are inappropriate in grants of authority to applicants seeking to provide motor-substitute-for-abandoned-rail service pursuant to the statutory exceptions to the general licensing provisions contained in the Motor Carrier Act of 1980.<sup>27</sup> The Commission also amended its restriction removal rules enabling freight forwarders to remove operating restrictions from their permits and thus provide more efficient and economical service to a greater segment of the shipping public.<sup>28</sup>

Policies regarding the control of duplicate operating rights were reexamined. The Commission found that the rationale supporting such policies was no longer valid. The prohibition against motor carriers of property holding duplicate operating rights under common control has been removed, and the Commission will no longer follow the past general practice of denying operating rights applications of trucking companies merely because they would result in commonly controlled carriers holding duplicate authority.<sup>29</sup>

The Commission completed an investigation of whether it should assert jurisdiction over the transportation of hazardous wastes. It concluded that it could find no justification for excepting hazardous wastes (other than nuclear or radioactive waste) from the general rule that commodities of no economic value are not "property" for purposes of Commission jurisdiction. Accordingly, the Commission found that it has no jurisdiction over the for-hire transportation of such wastes.<sup>30</sup>

In the area of exemptions from regulation, the Commission continued to examine and refine its rules implementing the Compensated Intercompany Hauling (CIH) service provisions of the Motor Carrier Act of 1980.<sup>31</sup> Additionally, the Commission issued a final policy statement concerning the distinction between private and for-hire carriage in circumstances in which a

<sup>25</sup> *Bell Trucking, Inc., Extension—Foods*, 132 M.C.C. 845 (1982).

<sup>26</sup> No. MC-148353 (Sub-No. 4), *Porter Lines, Incorporated, Extension—New York* (not printed), decided June 24, 1982, and No. MC-158495, *OMH Trucking Company d/b/a Hubbard Cartage Company Common Carrier Application* (not printed), decided June 23, 1982.

<sup>27</sup> No. MC-159639, *Florida-Texas, Inc., Common Carrier Application* (not printed), decided July 21, 1982.

<sup>28</sup> Ex Parte No. MC-142 (Sub-No. 2), *Freight Forwarder Restrictions*, 132 M.C.C. 832 (1982).

<sup>29</sup> Ex Parte No. MC-79 (Sub-No. 1), *Control of Duplicate Operating Rights*, 127, M.C.C. 780 (1981).

<sup>30</sup> No. MC-C-10799, *Petition for Declaratory Order—Transportation of Hazardous Wastes* (not printed), decided June 24, 1982.

<sup>31</sup> Ex Parte No. MC-122 (Sub-No. 3), *Interpretation—Intercompany Hauling*, 132 M.C.C. 736 (1981).

private carrier conducts its operations with equipment and drivers leased from unregulated lessors, including owner-operators.<sup>32</sup>

Proposed revisions of additional policies and procedures were under consideration at the close of the fiscal year. As negotiations between the United States and Canada continued over reciprocity in licensing and regulatory procedures, the Commission continued to examine its policies in this area.<sup>33</sup> In a related matter, the Commission proposed to amend its regulations with regard to interchange policies at international boundary lines.<sup>34</sup>

The Commission also decided to reexamine a 47-year-old ICC regulation that restricted the ability of some of the Nation's railroads to offer their own large-scale trucking services in competition with independently-owned motor carriers.<sup>35</sup> Under the "special circumstances" doctrine, the ICC generally has not authorized railroads to offer broad-based trucking services unless a railroad could demonstrate that special circumstances justified the service and the service was not currently being offered by independent motor carriers.

## Household Goods

Fiscal year 1982 marked a transition in household goods regulation. In a strongly worded opinion,<sup>36</sup> a Federal Appeals Court upheld new regulations adopted by the Commission following passage of the Household Goods Transportation Act of 1980. In keeping with the Court's instructions, the Commission set a date of February 1, 1982 for the rules to go into effect so that carriers would have adequate time to adjust their operations.

The Commission's Office of Compliance and Consumer Assistance (OCCA) framed informal interpretations in response to a series of questions posed by the moving industry about the new rules. These opinions, while not binding on the Commission in a formal case, offered guidance to household goods carriers on what was considered by OCCA as appropriate implementation of the new operational regulations.

A controversy concerning the applicability of the new reweigh rules arose between the Department of Defense and the moving industry. The department maintained that it was exempt from the rules under provisions<sup>37</sup> of the Interstate Commerce Act which permit carriers to perform transportation for the Federal government without charge or at reduced rates. Certain movers sought judicial relief<sup>38</sup> to resolve the controversy.

<sup>32</sup> Ex Parte No. MC-122 (Sub-No. 2), *Lease of Equipment and Drivers to Private Carriers*, 132 M.C.C. 756 (1982).

<sup>33</sup> Ex Parte No. MC-157, *Investigation into Canadian Law and Policy Regarding Applications of American Motor Carriers for Canadian Operating Authority*.

<sup>34</sup> Ex Parte No. MC-73 (Sub-No. 1), *Interchange Policies at International Boundary Lines*.

<sup>35</sup> Ex Parte No. MC-156, *Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates*.

<sup>36</sup> *North American Van Lines, Inc., et al. v. U.S. and I.C.C.*, 666 F.2d 1087 (1981).

<sup>37</sup> 49 U.S.C. 10721(b)(1).

<sup>38</sup> *Allied Van Lines, Inc., et al. v. U.S. Department of Defense et al.*, Civ. No. 82-C-3384 (7th Cir., filed May 27, 1982).

The Commission issued a formal interpretative statement<sup>39</sup> holding that the new reweigh rules do not apply to the movement of household goods for the Department of Defense or any other Federal agency or instrumentality. The Commission then filed a motion requesting dismissal of the civil action as to itself on the basis of the interpretative statement. At the close of the fiscal year, no ruling on the motion had been issued by the court. Judicial review of the Commission's decision to issue the interpretative statement also was sought and was pending when the fiscal year ended.<sup>40</sup>

In response to a petition, the Commission clarified the status of full or replacement value protection plans in relation to regulations governing household goods carriers' bills of lading. The Commission held that those rules, which prescribe specific language on bills of lading concerning shipments transported on a released or declared value, did not prohibit placement of an additional valuation statement on the bill of lading to give effect to full or replacement value protection plans.<sup>41</sup> The Commission also held that carriers seeking to depart from the mandated valuation statement applicable to released or declared value shipments should file a released rates application rather than a petition for a rule change. The petition was dismissed without prejudice to the filing of an appropriate released rates application.

A staff study was conducted to review the posture of the household goods industry following the adoption of the Household Goods Transportation Act of 1980. Among its principal findings were the following items:

- The industry includes from 1,100 to 1,300 carriers, about half of all the carriers authorized to transport household goods.
- The ten largest carriers generate about 58 percent of the total revenues of the industry.
- The industry employs about 8,000 agents and from 12,000 to 15,000 owner-operators.
- Approximately 80 percent of the intercity revenues of the industry come from the transportation of ordinary household goods. Two percent of the revenues are derived from the moving of the furnishings and equipment of commercial establishments while 18 percent comes from the transportation of high value, fragile commodities.
- Approximately half of the shipments of household goods are moved for individual householders. Shipments for commercial shippers and the government comprise the balance.
- During the past two years, the tonnage transported by the industry has declined, but the revenues have increased at the same rate as the increase in the Consumer Price Index.
- In comparison to other types of motor carrier operations, household goods transportation is labor intensive with the bulk of the labor being provided by agents and owner-operators.
- As a result of relaxed restraints against entry, a number of carriers are entering the market or broadening existing authority. This may be somewhat restrained by the

<sup>39</sup> Ex Parte No. MC-19 (Sub-No. 36), *Interpretative Statement, Applicability of Revised Operational Household Goods Regulations to Government Traffic* (not printed), decided June 14, 1982.

<sup>40</sup> *Allied Van Lines, Inc., et. al. v. U.S. and ICC.*, Civ. No. 82-2277 (7th Cir., filed August 10, 1982).

<sup>41</sup> Ex Parte No. MC-19 (Sub-No. 39), *Household Goods Carriers' Bills of Lading Provisions Concerning Full or Replacement Value Protection Tariff Items* (not printed), decided July 19, 1982.



specialized nature of the service provided by the industry and the strength of established carriers, particularly with respect to the necessity of agency systems. However, new or innovative service concepts and a recovery of the national economy could encourage new entry into the industry.

- An increasing number of applications were filed in the latter part of the year seeking authority to transport household goods as contract carriers for named shippers.
- A wide variety of service and price options is being offered. Volume discounts, guaranteed service dates and plans for the assumption of full value cargo liability are available throughout the industry.
- Price and service innovations appeared to have had little impact on the number of moves. Shippers seldom have discretion as to if, when or where they move.
- Binding estimates are being offered by most carriers.
- While use of binding estimates is expanding, to date only one major carrier is using binding estimates as a primary marketing and pricing tactic.
- During 1981, less than 50,000 shipments were transported on binding estimates, 47,000 of which were moved by one carrier.
- During 1981, four of the five largest carriers realized significantly less revenue per item on shipments moved on binding estimates than they would have received under their weight-based tariff rates.

An ICC review of household goods consumer complaints received during

fiscal year 1982, revealed a dramatic 44 percent reduction in the number of complaints received compared with the number filed during fiscal year 1981.

In October 1981, the Commission affirmed a grant of nationwide contract carrier authority to transport household goods<sup>42</sup> and took the opportunity to dispel widespread arguments that by its very nature household goods transportation cannot qualify as contract carriage. In November 1981, the decision was challenged in court.<sup>43</sup> The court action still was pending at the end of the fiscal year.

In its decision, the Commission noted that it had made many grants of contract carrier authority to transport general commodities without excepting household goods, and several such grants expressly for household goods transportation. It acknowledged that initial confusion and questions concerning the inclusion of household goods in general commodity contract awards arose when Commission policy changes were first expressed<sup>44</sup> and continued while the same proceeding remained pending subject to a petition to reopen. However, the Commission recognized that in the aftermath of hundreds of decisions authorizing general commodity contract authority inclusive of household goods commodities, as well as certain recent awards of permits to carry first proviso

<sup>42</sup> *Bekins Van Lines Co., Contract Carrier Application*, 132 M.C.C. 726 (1981).

<sup>43</sup> *Aero Mayflower Transit Inc., et. al., Civ. Action No. 81-2772* (7th Cir.)

<sup>44</sup> *Ex Parte No. 55 (Sub-No. 43A), Acceptable Forms of Requests for Operating Authority*, 45 Federal Register 86798 (December 31, 1980).

household goods traffic,<sup>45</sup> the issue of household goods operations qualifying as contract carriage is no longer a novel one.

Along with the Commission's action on the propriety of issuing permits in the household goods area, the ICC took significant steps to resolve the issue of the standing of protestants to oppose such contract applications. The Commission determined that merely holding common carrier nationwide household goods authority and showing that extensive operations are conducted for many shippers does not qualify a carrier to protest. Instead, because the scope of a contract carrier application is restricted by a limitation of service to the named shipper, a qualifying protestant must show that it served that particular shipper during the previous 12-month period, or alternatively, that it conducted active, good faith solicitation of that particular shipper's household goods traffic during the same period.

In another important area, Federal government traffic, the Commission now is required to make a finding of public convenience and necessity on each application for authority which formerly had been handled under master certificate procedures. A recent decision reversed the master certification practice by holding that the Commission was without authority to

grant such certificates after July 1, 1980. This is because the Motor Carrier Act of 1980 eliminated the use of master certificates to support grants of operating authority after that date, even if the applications for such authority were processed and public need determinations were made before that date.<sup>46</sup>

On January 15, 1982, the Commission issued a notice<sup>47</sup> that final rules governing motor carrier pooling applications and ICC procedures for processing those applications also applied to pooling applications filed by household goods carriers and their agents. The original pooling application regulations issued in April 1981 did not extend to agreements reached by carriers and their agents under the provisions of the Household Goods Act of 1980. To rectify this situation, this policy clarification was made retroactive to April 9, 1981, the date the regulations were first implemented.

Another development in the pooling area involves a dispute and the Commission's institution of a declaratory order proceeding to resolve the issue of whether household goods agents holding no operating authority themselves, but having motor carriers affiliates, are carriers for purposes of applicable pooling provisions.<sup>48</sup>

This inquiry was begun following a household goods carrier's announcement that it planned to terminate the

<sup>45</sup> See No. MC-120472 (Sub-No. 6), *Gollott & Sons Transfer & Storage, Inc., Contract Carrier Application* (not printed), decided June 11, 1981; No. MC-116400 (Sub-No. 8), *Lawrence Transfer and Storage Corporation, Extension—Household Goods* (not printed), decided July 2, 1981; No. MC-1745 (Sub-No. 11), *Interstate Van Lines, Inc., Extension—Contract Carrier Service* (not printed), decided August 5, 1981; and No. MC-112070 (Sub-No. 23), *Gray Moving & Storage, Inc., Extension—Glendale, Co.* (not printed), decided August 5, 1981.

<sup>46</sup> *Aero Mayflower Transit Co., Inc., v. I.C.C.*, Civil Action No. 80-1990 (D.C. Cir. August 10, 1982), 878 Federal Carriers Rep. (CCH) No. 83,024.

<sup>47</sup> Ex Parte No. MC-141, *Policy Statement on Motor Carrier Pooling Applicants* (not printed), decided April 9, 1981.

<sup>48</sup> See MC-F-14784, *Atlas Van Lines, Inc.—Pooling*; Finance Docket No. 29972, *Declaratory Order—The Applicability of 49 U.S.C. 11342 to Agreements Between Household Goods Carriers and Noncarrier Agents*.



existing pooling agreement with its agents and implement a new policy of dealing solely with noncarrier agents. Elements of the policy which the Commission will consider including requiring agents that hold operating authority to transfer that authority to subsidiaries or forfeit the use of their names. The affected agents cite such options as severing their affiliation with the national van line or divesting themselves of their own operating authority as unreasonable and clearly improper aims of the involved policy.

While admittedly this dispute has arisen between one national household goods carrier and its agent, the Commission noted that a declaratory order proceeding is warranted in light of the precedent which that carrier (Atlas Van Lines) may be setting for the rest of the household goods industry in implementing its new policy. Public comments were being solicited as the fiscal year came to an end.

In a significant decision,<sup>49</sup> the Commission granted provisional approval of nonsubstantive amendments to the rate agreement filed by the Household Goods Forwarders Tariff Bureau on behalf of its member carriers.

Effective March 1, 1982, the Commission approved a proposed 9.2 percent nationwide increase in line-haul rates sought by the Household Goods Carriers' Bureau on household goods shipments.<sup>50</sup> The HGCB represents 1,700 member carriers. Its last increase in line-haul charges was two percent on January 1, 1981.

## The Independent Trucker

Independent truckers represent the largest segment of independent contractors in the trucking industry, furnishing a direct link between many of the Nation's major carriers and shippers. During the last few years, independent truckers have been presented both with new opportunities and challenges.

The Motor Carrier Act of 1980 affected all aspects of motor transportation, including independent truckers. Recent shifts in the Commission's regulatory direction resulted in a changing motor carrier environment. Several changes brought about by the new law and Commission policies have assisted independent truckers by opening new avenues of service and providing a wider variety of choices for them.

Commission rules implementing Section 5 of the Motor Carrier Act<sup>51</sup> have resulted in the issuance of 272 operating certificates to independent truckers. This proceeding enables independent truckers to obtain operating authority to transport food and other edible products through a simplified "fitness-only" procedure. A reduced filing fee (\$150), a letter rate filing procedure and a postcard certification of compliance relieve independent truckers desiring this type of authority from the more stringent requirements generally placed upon regulated motor carriers.

Section 15 of the Act states that a shipper or receiver must furnish or pay for any loading or unloading assistance it requires to be performed by the

<sup>49</sup> Section 5a (49 U.S.C. 10706) Application No. 106, *Household Goods Forwarders Tariff Bureau Agreement* (not printed), decided September 16, 1982.

<sup>50</sup> Suspension Board Case No. 70704 (not printed), decided February 8, 1982.

<sup>51</sup> Ex Parte No. MC-140, *Owner-Operator Food Transportation*, 132 M.C.C. 521 (1981).

driver. The section also specifies that coercive loading or unloading practices, known as lumping, are illegal. As an outgrowth of these provisions, the ICC initiated three actions.

First, an extensive antilumping enforcement program was undertaken. Fifty-eight lumping complaints were under investigation between October 1, 1981 and September 30, 1982. Second, rules were established to require that carriers using the services of independent truckers agree in writing (i.e., including language in their lease agreements) on the parties' responsibilities for loading and unloading and the amount of compensation, if any, to be paid for this service.<sup>52</sup> And third, along with the U.S. Department of Agriculture, the ICC submitted a report to Congress regarding loading and unloading practices prevalent in the motor carrier industry.

In addition to proceedings prompted by provisions of the Motor Carrier Act, the Commission took other actions affecting independent truckers. The most far reaching was a proposal to permit private carriers (shippers who also operate their own trucking fleets) to lease equipment and drivers from a single source.<sup>53</sup> This action reversed a long-standing ICC policy prohibiting owner-operators and others not possessing ICC authority from leasing their equipment and drivers to private carriers. This policy change would furnish independent truckers with a new source of revenue. However, the effectiveness of the policy change was stayed pending judicial review. As of the close of the fiscal year, the case was awaiting a decision by the court.

<sup>52</sup> Ex Parte No. MC-43 (Sub-No. 11), *Lease and Interchange of Vehicles*, 132 M.C.C. 752 (1982).

<sup>53</sup> Ex Parte No. MC-122 (Sub-No. 2), *Lease of Equipment and Drivers to Private Carriers* (not printed), decided February 9, 1982.

The Commission commenced a rulemaking proceeding<sup>54</sup> proposing to further clarify and close loopholes in the Commission's existing leasing rules. Among the items proposed were limitations on the paperwork carriers may require prior to making payment to independent truckers and specification of the amount of chargebacks.

Of particular concern to independent truckers in the household goods area of operations is lease agreements involving carrier agents. The ICC also addressed this concern.<sup>55</sup> In this particular proceeding, the Commission specified that carrier compliance with its regulations applies, regardless of whether the carrier leases vehicles with drivers directly from the equipment owner or indirectly through an intermediary third-party agent.

The Commission again this year dealt with the issue of fuel compensation.<sup>56</sup> It replaced its existing revenue-based fuel surcharge with a mileage-based program. This modification requires that independent truckers be reimbursed for fuel costs above 63.5 cents per gallon. The compensation factor—expressed in cents-per-mile—fluctuates in one-half cent increments, dependent upon charges in fuel prices. Fuel payments initially were set at 14 cents a mile for all miles traveled (both loaded and empty) on carrier-related business. This modification established a more equitable mechanism for independent trucker fuel reimbursement.

<sup>54</sup> Ex Parte No. MC-43 (Sub-No. 13), *Lease and Interchange of Vehicles (Rules Modifications)* (not printed), decided August 24, 1981.

<sup>55</sup> Ex Parte No. MC-43 (Sub-No. 7A), *Lease and Interchange of Vehicles*, 132 M.C.C. 822 (1982).

<sup>56</sup> Ex Parte No. MC-311 (Sub-No. 4), *Modification of the Motor Carrier Fuel Surcharge Program* (not printed), decided October 5, 1981.

Other Commission actions to benefit owner-operators were taken during the fiscal year. For example, the Commission's field staff and Small Business Assistance Office in Washington, D.C. received thousands of inquiries and requests for assistance on such subjects as how to file for operating authority to information on state regulations. During the fiscal year, the Commission received more than 7,000 complaints from independent truckers, the majority of which related to settlements.

The Commission also sought to assure that independent truckers receive timely and accurate information on events affecting their operations. Through use of a computerized mailing list, the Commission, through its Small Business Assistance Office, disseminated information to 74 independent trucker associations and

periodicals. Field staff met with independent truckers at truck stops, ports of entry, and other locations frequented by truckers to answer questions and offer assistance.

In conjunction with the Small Business Administration and the Department of Transportation, the ICC conducted its second annual series of 24 two-day conferences to offer independent truckers the necessary tools to effectively compete in the transportation industry. The seminars were held throughout the country between February 18 and June 23, 1982, and were well attended. Owner-operators who attended the seminars were afforded a better understanding of Commission rules and practices and an explanation of how economic regulations affect their business. A third series of conferences is planned for the new fiscal year.



## BUS COMPANIES

### General Financial Condition

Reflecting the decline in economic conditions, the Class I intercity bus carriers reported lower earnings and a drop in ridership in fiscal year 1982. This industry is dominated by Greyhound Lines, which accounts for about 60 percent of total operating revenues of the Class I intercity bus market. Next in size is the Trailways System with approximately 21 percent of the industry's total operating revenues, followed by smaller regional carriers which share the remainder of the market.

ICC data for the ten largest bus companies for the 12 months ending June 30, 1982, and June 30, 1981, show that the number of revenue passengers carried declined by 10.2 percent and operating revenue rose slightly to \$1.1 billion due to fare increases. Net income decreased 25.6 percent to \$38.9 million and return on equity dropped to 8.12 percent from 11.49 percent.

Preliminary industry data for calendar 1981 indicate that 46 Class I carriers, which generate 71 percent of the revenues reported by all 1,470 intercity bus companies, reported a 5.8 percent increase in revenues compared to calendar year 1980. Revenues from intercity regular route service and package express service rose 6.4 percent and 10.1 percent respectively, while charter and special service revenues declined about one percent. However, the total number of passengers carried declined 4.8 percent and net income decreased 38 percent to about \$55 million.

On September 20, 1982, the Bus Regulatory Reform Act of 1982 was enacted. Among other things, it authorizes passenger carriers to enter

new markets and drop service in unprofitable areas with relative ease and automatically removes various route restrictions. Preemption provisions permit the ICC to preempt State closed door policies, intrastate rates that create a burden on interstate commerce, and State actions which prevent exit or reduction of intrastate service on interstate routes being discontinued. The legislation also permits bus carriers to raise or lower fares within a zone of rate freedom without ICC approval. The Commission's investigation and suspension power is completely eliminated, for those zone filed rates or fares unless the rate is collectively set or predatory or discriminatory. The bill also contains limitations on antitrust immunity and directs the Ratemaking Study Commission to evaluate related issues. However, until economic conditions improve, it will be difficult to assess the impact of this far-reaching legislation on the industry's general financial condition.

### Rates

Federal regulation of the intercity bus industry has continued relatively unchanged since 1935 until the Bus Regulatory Reform Act of 1982 was enacted. Among other things, the new Act is designed to encourage more competitive pricing through the mechanism of ratemaking flexibility under a zone of rate freedom (ZORF), similar in concept to the ZORF under the Motor Carrier Act of 1980 (MCA).

The Commission immediately initiated a number of rulemaking proceedings to implement the Bus Act, including several that involve rate



issues. One of these involved procedures for review of intrastate bus rates.<sup>1</sup> Under the Bus Act, the Commission has 60 days to render a decision when a bus company appeals a state agency decision. This rulemaking designed special rules for handling appeals under the shortened procedure, which includes, for example, a requirement that a petitioner file its entire case with its appeal and limiting the parties to those who participated at the state level.

Another was a proceeding concerning bus rate bureau procedures.<sup>2</sup> A new agreement was required to be filed with the Commission by the bus industry rate bureau, the National Bus Traffic Association, within 120 days from the effective date of the Act. The Commission proposed to adopt the same standards already implemented in connection with the MCA, where the statutory provisions are the same in the Bus Act and MCA. Where they differ, the Commission will set different standards. Collective discussion and voting on fares end by January 1, 1984, except for general rate increases and decreases or broad changes in tariff structures.

Another rulemaking proceeding involved procedures for complaints against bus carrier rates and fares.<sup>3</sup> Proposed bus rates or fares filed under the ZORF cannot be investigated or suspended except on grounds that they are collectively established or are

predatory or discriminatory. Nevertheless, the Bus Act permits complaints to be filed challenging the reasonableness of ZORF established rates or fares after they become effective. Those complaints must be disposed of within 90 days and this rulemaking provides special rules for handling them under expedited procedures. The rules include requiring a complainant to file its entire case with its complaint, shortening the periods for filing all pleadings by both sides, and restricting the exercise of discovery procedures.

## Operating Rights

The overriding event affecting the licensing of motor carriers of passengers during the fiscal year was the enactment of the Bus Act. During the time Congress was putting the finishing touches on the legislation, the Commission was putting the finishing touches on a number of rulemaking proceedings so the agency would be in a position to promptly begin implementing the measure as soon as it became law. The Commission also wanted the final rules to be in place by the date the new law was scheduled to become effective—November 19, 1982.

Three of the rulemakings directly affected operating rights. A first dealt with application procedures both for interstate authority and preemptive intrastate authority over interstate routes.<sup>4</sup> A second concerned the removal of intermediate point restric-

<sup>1</sup> Ex Parte No. MC-160, *Procedures for Review of Intrastate Bus Rates*, Notice of proposed rules served September 22, 1982.

<sup>2</sup> Ex Parte No. 297 (Sub-No. 6), *Bus Rate Bureau Procedures*, Notice served September 28, 1982.

<sup>3</sup> Ex Parte No. MC-162, *Procedures for Complaints Against Bus Carrier Rates and Fares*, Notice of proposed rules served October 7, 1982.

<sup>4</sup> Ex Parte No. 55 (Sub-No. 56), *Applications for Operating Authority—Motor Passenger Carriers* (not printed), decided September 10, 1982.

tions from existing authorities.<sup>5</sup> And a third related to the discontinuance of service in both interstate and intrastate commerce over interstate routes.<sup>6</sup>

## Service

The new Bus Act is expected to create a more competitive environment in the bus industry and provide an opportunity for improved service to travelers. Under the Act, carriers are able to enter new markets and exit from unprofitable ones more easily. "Closed-door" restrictions, which pre-

vent carriers from picking up or letting off passengers at intermediate points, are being removed.

In a matter unrelated to the legislation, the Commission adopted regulations that defined the groups of articles that motor common carriers of passengers may refuse to transport in checked baggage and for which bus lines may limit or disclaim liability for loss or damage. The regulation was needed to clarify the extent to which bus lines may limit their liability and what articles they may lawfully refuse to carry.<sup>7</sup>

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<sup>5</sup> Ex Parte No. MC-142 (Sub-No. 3), *Removal of Restrictions from Authorities of Motor Carriers of Passengers—Intermediate Points* (not printed), decided August 31, 1982.

<sup>6</sup> Ex Parte No. MC-161, *Preemption of State Regulation of Regular-Route Exit—Motor Passenger Carriers* (not printed), decided September 10, 1982.

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<sup>7</sup> Ex Parte No. MC-95 (Sub-No. 1), *Practices of Motor Common Carrier Passengers—Checked Baggage Prohibitions and Liability Exemptions*, 365 I.C.C. 719 (1982).

## FREIGHT FORWARDERS

The Staggers Rail Act of 1980 permits purchases of transportation to enter into contracts with rail centers. The Commission concluded that freight forwarders may avail themselves of this provision and enter into rail contracts.<sup>1</sup> This affords freight forwarders additional flexibility and places them on an equal footing with other purchasers of transportation that ship under similar conditions.

The Commission determined that its existing restriction removal rules<sup>2</sup> did

not apply to limitations contained in freight forwarder permits.<sup>3</sup> The rules provide an expedited procedure for processing requests to remove unreasonably narrow limitations imposed on certain authorities issued by the Commission. The Commission subsequently promulgated a revision to its rules to allow freight forwarders to take advantage of the restriction removal procedures.<sup>4</sup>

<sup>1</sup> Ex Parte No. 387, *Railroad Transportation Contracts*, 367 I.C.C. (1982).

<sup>2</sup> 49 CFR 1137.

<sup>3</sup> FF-416 (Sub-No. 2)X, *Imperial Carriers, Inc.—Commodity and Territorial Broadening* (not printed), decided November 13, 1981.

<sup>4</sup> *Freight Forwarder Restrictions*, 132 I.C.C. 832 (1982).

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## WATER CARRIERS

Regulatory reform measures in the motor and rail industries have had an impact on inland water transportation. Among the problems arising from the regulatory reforms of other modes has been the inability of water common carriers to compete directly with the rail industry through contract rates.<sup>1</sup>

The Commission concluded that water carriers do not have standing to file a complaint against a rail contract.<sup>2</sup> This issue also has been argued before the Circuit Court of Appeals for the District of Columbia. A decision was pending at the end of the fiscal year.<sup>3</sup>

The Commission was considering changes in its credit regulations for all modes, including water carriers.<sup>4</sup> Adoption of these proposals would help simplify and add flexibility to shipper-carrier credit arrangements.

Recognizing the importance of increased competition in the surface transportation industry, the Commission continued to process applications with a view to increasing competition not only among water carriers, but also among water carriers and the other modes of transportation.

<sup>1</sup> The Interstate Commerce Act allows a water carrier to operate as a common carrier or as a contract carrier. However, a water common carrier is not authorized to enter into contract rates which rail carriers may now do under Section 10713 of the Act.

<sup>2</sup> *Railroad Transportation Contracts*, 367 I.C.C. (1982).

<sup>3</sup> *Water Transport Association v. I.C.C.*, No. 81-1451, (D.C. Cir., 1982).

<sup>4</sup> Ex Parte No. MC-1, *Payment of Rates and Charges of Motor Carriers*; Ex Parte No. 73, *Regulations for Payments of Rates and Charges*, Ex Parte No. 143, *Rules and Regulations Governing the Settlement of Rates and Charges of Common Carriers of Property by Water* (not printed), decided April 30, 1981.

## INTERMODAL TRANSPORTATION

The Commission continued to promote the growth of intermodal transportation services during fiscal year 1982.<sup>1</sup>

In one major decision,<sup>2</sup> the Commission clarified certain antitrust immunity matters which arose in a 1981 decision exempting from regulation rail and truck service provided by rail carriers in connection with trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) service.<sup>3</sup> The earlier decision concluded that the exemption from regulation of railroad operations involving TOFC and COFC service, whether conducted on railroad flatcars or in trucks owned and operated by the railroad itself, likely would stimulate improvements in service without harming shippers.

The clarification decision was issued in response to a petition filed by the Association of American Railroads. It addressed whether or not the exemption from regulation and the resulting loss of antitrust immunity covered the three sets of agreed-upon rules among the railroads pertaining to the interchange of TOFC/COFC equipment. The sets of rules are: (1) the per diem rules and charges, which determine the charges that a carrier with foreign-owned TOFC/COFC equipment on its line must pay to the owner of the equipment; (2) the service rules, which govern the loading and handling carrier in any direction; and (3) the inter-

change rules, which contain provisions relating to when equipment is acceptable in interchange, when foreign equipment may be repaired, responsibility for damage, and rates for repairs.

The Commission concluded: (1) that the antitrust immunity does not continue with regard to the per diem rules and charges for TOFC/COFC equipment; (2) that the antitrust immunity does not apply to the TOFC/COFC service and interchange rules, although remedies may be available; and (3) that the antitrust immunity remains applicable to flatcars in TOFC/COFC service.

The Commission reasoned that elimination of the carriers' antitrust immunity for mileage and per diem charges can further enhance the competitive environment for TOFC/COFC service; that the service and interchange rules have the same status as jointly promulgated rules in any other industry (which are not illegal merely because they result from collective action) and therefore do not necessarily violate the antitrust laws; and that antitrust immunity remains applicable to the setting of per diem and mileage rates for railroad flatcars used in exempt intermodal service because of the interchangeability of most TOFC/COFC flatcars, and the virtual impossibility of separating applications between exempt and nonexempt traffic. To enable the railroads to make needed adjustments in light of the clarification decision, the Commission twice extended the effective date.<sup>4</sup>

Fiscal year 1982 was the first full year in which TOFC/COFC operated

<sup>1</sup> See—*Emery Air Freight Corp. Freight Forwarder Applic.*, 339 I.C.C. 17, 27-37 (1971); *IML Freight, Inc. Extension—Containerized Freight*, 118 M.C.C. 31, 32 (1973); and *Holt Motor Express, Inc.—Ext.—Baltimore, Md.*, 120 M.C.C. 323, 329-330 (1974).

<sup>2</sup> *Improvement of TOFC/COFC Regulation*, 365 I.C.C. 728 (1982), 47 Federal Register 26634 (June 21, 1982).

<sup>3</sup> *Improvement of TOFC/COFC Regulation*, 46 Federal Register 14348 (February 27, 1982).

<sup>4</sup> *Improvement of TOFC/COFC Regulation*, 47 Federal Register 33274 (August 2, 1982), and 47 Federal Register 38904 (September 3, 1982).

under exempt status. Based on weekly data reported to the Association of American Railroads, loading of containers and trailers totalled approximately 4.9 million in the 18 months following exemption compared to about 4.7 million in the preceding 18 months. This increase took place in spite of the severe recessionary pressures on railroad traffic as a whole. The Commission initiated a monitoring study of TOFC/COFC service at the close of the fiscal year.

During the fiscal year, Hallamore Motor Transportation, Inc., a motor common carrier, applied for authority to operate as a water common carrier.<sup>5</sup> The purpose of the proposal was to enable the applicant to provide a coordinated motor-water service to the

shipping public. The applicant stressed that this type of service requires close scheduling of land and water movements to avoid uneconomical delays. But Hallamore had experienced excessive delays waiting for a vessel to arrive at a port for transloading. The Commission granted the application after considering the state of competition between the applicant and protesting carriers, and between water carriage and other modes of transportation. The ICC also determined that a grant of authority to the applicant would offer shippers a wider selection of carriers and would provide an incentive for carriers to be more responsive to shippers' needs.

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<sup>5</sup> No. W-1341, *Hallamore Motor Transportation, Inc., Water Common Carrier Application* (not printed), decided March 1, 1982.

## TARIFFS

The number of tariffs filed in the fiscal year exceeded by far the number ever received in an annual period. Over 900,000—an increase of more than 250,000 over fiscal year 1981—were received. This was due to several factors: the continued expansion of independent actions by individual carriers to meet the competitive conditions of the market, the entry of many new carriers into the transportation industry, and numerous filings of fuel-related increases early in the year.

Carriers were authorized and enjoined to file fold-in fuel related charges into their standard rate structure.<sup>1</sup> Provisions to ensure the adequate compensation of owner-operators were maintained by the Commission. More than 350 owner-operators took advantage of the simplified tariff filing procedures to cover their operations as carriers of food products.<sup>2</sup> The 2,199 rail-shipper contracts filed during the period are indicative of the viability of the new provisions of the Staggers Act.<sup>3</sup> Nearly two-thirds of the contracts were received during the latter half of the fiscal year, indicating an increasing awareness on the part of the industry to this method of doing business.

Many tariff provisions required relief from tariff publishing rules. The ICC's Special Permission Board facilitated the issuance of these provisions through special tariff authorities, but insured that the provisions were made available to all who could use them, thereby protecting the interests of all shippers.

The Special Permission Board handled a large increase in applications proposing rate changes and innovations. Requests to the Board increased by 49 percent, from 8,357 in fiscal year 1981 to 12,425 in fiscal year 1982. The number would have been much greater had the Board not issued special tariff authorities or expanded requested authorities on its own in anticipation of carrier needs, or granted blanket relief when requested.

These broad grants eliminated the filing of over 30,000 applications. Approximately \$600,000 in filing fees alone, plus the administrative costs to the applicants and the Commission were saved. For example, one grant authorized the filing on one day's notice of individual carrier flagouts (non-participation) and exceptions to a general increase, which eliminated the necessity of filing an individual application and justifying short notice for each carrier flagout.<sup>4</sup> Another authorized the fold-in of the fuel surcharge by use of the master tariff format.<sup>5</sup>

Other broad grants were designated to reduce the number of tariff pages required to be filed to accomplish rate changes. These grants authorized piecemeal amendments in lieu of republishing the entire item, including the portion not being changed, and saved the filing of tens of thousands of pages. This resulted in substantial paper, distribution and mailing savings to the carriers. In one case, authority was granted to publish a piecemeal carrier restriction that was accomplished by amending a single page in four tariffs rather than having to

<sup>1</sup>Ex Parte No. 311 (Sub-No. 4), *Modification of the Motor Carrier Fuel Surcharge Program*.

<sup>2</sup>49 CFR 1311, *Tariff Filings for Owner-Operator Food Transportation*.

<sup>3</sup>49 U.S.C. 10713, *Contracts*.

<sup>4</sup>Special Tariff Authority No. 82-8877, *Publish Carrier Flagouts on One Day's Notice*.

<sup>5</sup>Special Tariff Authority No. 82-0711, *Master Tariff of Fuel Surcharge Fold-In*.

amend hundreds of pages in each tariff.<sup>6</sup>

Many authorities were issued that permitted innovations in tariff publication, in addition to saving the filing of numerous applications and thousands of tariff pages. One of these granted authority to convert tariffs from the customary system to the Metric International System of Units.<sup>7</sup> Another authorized carriers to use the U.S. Zip Code Directory for explanation of zip codes used to identify points in tariffs.<sup>8</sup>

These economies reduced carrier costs that hopefully will be passed on to transportation users in the form of lower rates to shippers.

Grain shippers in Kansas, Oklahoma, and Texas formerly were served by the Oklahoma-Kansas-Texas Railroad (OKT). But the OKT ceased operations. The ICC granted authority to the Atchison, Topeka and Santa Fe Railroad (ATSF) to establish on one day's notice truck substitution allowances for wheat moving from transit points. This action enabled shippers to move grain from the transit storage point on the OKT to the ATSF without economic loss.<sup>9</sup>

Although innovative tariff provisions encouraged by the Motor Carrier Act and the Staggers Rail Act of 1980 reached a peak in 1981, some carriers continued to propose novel publications in fiscal year 1982. Several examples follow.

A motor carrier authorized to serve all points in Hawaii as well as between

Hawaii and the 48 contiguous states filed a tariff as a non-vessel operating common carrier naming proportional rates from Los Angeles, California, to points in Hawaii. The rates are used in connection with rates published in other tariffs to construct a two-factor through rate. The carrier is able to offer a through service and accept full responsibility for the movement. The method of publishing also eliminates the need to publish and distribute a costly tariff naming single factor rates.<sup>10</sup>

A contract carrier was authorized to file a schedule which did not name specific rates as required by tariff filing regulations. Rates are determined by a mathematical equation. The basis for arriving at charges are programmed into the compatible computers of the shipper and the carrier. The electronic rate calculations eliminate many manual staff hours and give immediate rate information without the need for a tariff search.<sup>11</sup>

Another carrier cost saving proposal approved by the Commission allowed a holding company owner of three motor carriers to publish a single schedule as an agent naming motor contract carrier rates between points served locally by a single carrier or jointly between one or more of the three participating contract carriers. Only one publication was required rather than three separate tariffs.<sup>12</sup>

<sup>6</sup> Special Tariff Authority No. 82-0162, *Restrict Less Truckload Rates*.

<sup>7</sup> Special Tariff Authority No. 82-10600, *Metric Conversion*.

<sup>8</sup> Special Tariff Authority No. 82-3501, *U.S. Postal Service Zip Code*.

<sup>9</sup> Special Tariff Authority No. 82-2409, *Motor Vehicle Credit or Allowances*.

<sup>10</sup> Finance Docket No. 38787, *Consolidated Freightways of Delaware*.

<sup>11</sup> Special Tariff Authority No. 82-6575, *Determination of Rates by Mathematical Equations*.

<sup>12</sup> Special Tariff Authority No. 82-10962-S, *Discount Schedule*.



## Informal Rate Cases

The Section of Rates and Informal Cases in the Bureau of Traffic used its informal procedures to settle 4,683 cases concerning disputes over rate and tariff matters during fiscal year 1982. This informal process prevented most of the disputes from ending up on the Commission's formal docket, which would have been time-consuming, complicated and expensive for shippers, carriers and the Commission. As a result, shippers were able to recover more than \$200,842 in disputed charges.

The Commission's special docket procedure permits rail and water common carriers to seek authority to refund or waive collection of unreasonable charges. A total of 471 special docket orders were served, authorizing total reparation and waiver of \$11,134,083. The largest single adjustment was a waiver of \$1,305,147 on 16 unit trainloads of corn due to abnormal marketing conditions resulting from the Soviet grain embargo of 1980 and drought conditions. The largest single refund amounted to \$396,328 in connection with 42 trainloads of coal.

Through the informal complaint docket, rail or water shippers may prevent expiration of the statutes of limitations for overcharges or unreasonable charges by writing to the Commission and describing their complaint. If the carrier agrees that a particular shipment involved overcharges or that the charges were unreasonable, then refunds or waiver of undercharges can be made without using time-consuming and costly formal procedures. The Commission processed 163 applica-

tions on the informal complaint docket during the fiscal year.

Motor common carriers acting with one or more other carriers, household goods carriers and freight forwarders are required to seek authority from the Commission prior to the publication of released rates. Released rates represent a limitation of a carrier's liability for a shipper's property. During the fiscal year, the Commission's Released Rates Board acted on nine applications for such authority.

## Suspension Board

New, increased or reduced rates and charges for the interstate service provided by the Nation's rail, motor, freight forwarder and water industries are filed with the Commission in tariff form, generally on not less than 30 days' notice<sup>13</sup> to the Commission and the public. Upon request by interested parties opposing the proposed tariff changes, the proposals are considered for possible investigation and suspension by the Commission's Suspension Board or by the entire Commission. Decisions of the Board are subject to reconsideration by a division of the Commission.

During fiscal year 1982, a total of 355 rate proposals filed with the Commission were protested. Of these proposals, 29 were suspended, 242 were permitted to become effective, six were allowed to go into effect, but were investigated, and 78 either were cancelled by the company, the protests were withdrawn, or the tariff was rejected by the Commission.

<sup>13</sup> The "Staggers Rail Act of 1980" (P.L. 96-448) amended 49 U.S.C. 10762(c)(3) to permit rail carriers to file new or increased rates on not less than 20 days' notice, and rate reductions on not less than ten days' notice.

There were 11 unprotested rate proposals considered by the Board on its own initiative. The Board suspended one of the proposals; ten were not handled because the tariff was cancelled or rejected.

Also considered were some 24 general increases in trucking rates and charges filed by the regional motor bureaus, two filed by household goods

carriers, and one by the National Bus Traffic Association.

The Board also considered 51 applications filed by companies to depart from rules that prohibit rail and water companies from charging more for transportation for a shorter distance than for a longer distance, over the same route and under the same transportation conditions.



## ENFORCEMENT

The Commission's enforcement program encompasses extensive investigations into targeted aspects of surface transportation as well as a full range of enforcement methods, such as court injunctions, criminal penalties, civil forfeitures, and contempt citations and sanctions.

### Fraudulent Conduct

Three former American Airlines employees were sentenced to prison for taking bribes from Biagio Robert Pinto, owner of Pinto Trucking Service, in return for giving Pinto the airline's freight business. George Keckeisen was sentenced to five years' imprisonment and fined \$5,000. Edward Pfeffer and John Buchanan were sentenced to two years' imprisonment and fined \$2,000. Biagio Robert Pinto was sentenced to seven years' imprisonment and fined \$10,000.<sup>1</sup>

In another case, three defendants were found guilty on substantially all counts with which they were charged. The charges involved conspiracy and misapplication of the funds of a motor common carrier. Frank Jones and James Jamerson each were sentenced to concurrent three-year terms of imprisonment on the fraud counts and five-year terms of imprisonment on the conspiracy count. Richard Webber was sentenced to a total of five years' imprisonment. Each of the three were placed on five years' probation and were required to pay back the sums they had obtained through fraudulent means.<sup>2</sup>

<sup>1</sup>U.S. v. Biagio Robert Pinto, et. al., Criminal No. 81-00057 (E.D. PA, June 28, 1982).

<sup>2</sup>U.S. v. Richard Eugene Webber, et. al., Criminal No. 81-264C, (W.D. WA, July 21, 1982).

### Fitness

The Commission denied the application of J. Cusmano & Son Steel Transportation, Inc. after it had been shown that the principal officer had been convicted of extortion and that the carrier had engaged in substantial unauthorized transportation, denied the Commission access to records, overloaded its vehicles, and utilized false bills of lading.<sup>3</sup>

In another application proceeding, an ICC Administrative Law Judge found that the evidence presented by the Commission's enforcement arm showed a "massive fraud" perpetuated by the principals of the applicant "against owner-operators through the sale, leasing and interstate operation of motor vehicle equipment." The application was denied.<sup>4</sup>

### Consumer Protection

In its continuing efforts to protect the consumer, the Commission has taken enforcement action against household goods carriers. A civil injunction was obtained against Northline Moving and Storage, Inc., William L. Cunningham, Lynda Cunningham and Kenneth W. Dougherty, of Houston, Texas, prohibiting them from the unauthorized brokering of transportation of household goods. The company has misrepresented its services to customers, thereby increasing their customer costs substantially.<sup>5</sup>

<sup>3</sup>MC-157771, J. Cusmano & Son Steel Transportation, Inc.—Common Carrier Application, decided August 27, 1982.

<sup>4</sup>MC-158851, Bulls-Eye Express—Application for Permanent Authority (not printed), decided June 8, 1982.

<sup>5</sup>I.C.C. v. Northline Moving and Storage, Inc., et. al., Civil No. H-80-2656 (S.D. TX, October 28, 1981).

A proceeding involving AAACon Auto Transport alleges violations of a Commission cease and desist order, and reflects the Commission's willingness to pursue revocation of operating authority in a proper case.<sup>6</sup> The oral hearing, which ended on May 27, 1982, lasted 62 days, during which 55 Commission witnesses and 79 AAACon witnesses testified. The transcript runs about 25,000 pages.

## Concessions

The Commission has been successful in obtaining substantial settlements and judgments for violations of the discrimination provisions of the Interstate Commerce Act.

In a complaint filed against six separate defendants, the government alleged that the defendants had knowingly received and accepted refunds of over one million dollars from several railroads on shipments of coal moving from eastern and midwestern mines to the Upper Great Lakes port of Marquette, Michigan, in violation of the Elkins Act. This case was successfully concluded with the payment of \$300,000 by the defendants.<sup>7</sup>

The Norfolk & Western Railway Company pleaded *nolo contendere* to a twenty count Information which charged it with granting concessions to A.M.F., Inc. by failing to assess special demurrage charges on property consigned to A.M.F., Inc. at Bellevue, Ohio. N&W was fined and paid \$100,000.<sup>8</sup>

Anheuser Busch, Inc. paid \$38,000 in civil forfeitures to settle claims for Elkins Act violations. Anheuser Busch had improperly obtained lower rates through claims for transit rates to which it was not entitled.

Altogether, during the past fiscal year, the Commission was responsible for the imposition and collection of over \$2,200,000 in fines and settlements. In addition, the Commission was responsible for seeing that over one million dollars in restitution was awarded to various parties.

## Owner-Operators

The Commission also acted to protect the rights of owner-operators. A permanent injunction was entered against Wheatley Trucking, Inc., ordering it to comply with Commission leasing regulations and to make payment to its owner-operators within 15 days after receipt of the necessary documentation.<sup>9</sup>

A permanent injunction was entered against Bibey Trucking Company, ordering it to make restitution of over \$35,000 to its owner-operators to comply with Commission rulings, and not to engage in unauthorized transportation.<sup>10</sup>

The Commission also was responsible for the conviction of two individuals who extorted money from an owner-operator. Both pled guilty and were waiting sentencing as the fiscal year ended.<sup>11</sup>

<sup>6</sup> MCC-7287, AAACon Auto Transport—Investigation and Revocation of Certificate.

<sup>7</sup> *U.S. v. Upper Peninsula Power Company, et al.*, Civil No. M-76-95CA2 (W.D.Mi., June 21, 1982).

<sup>8</sup> *U.S. v. Norfolk & Western Railway Company*, Criminal No. 81-46 (N.D.Oh., October 19, 1981).

<sup>9</sup> *I.C.C. v. Wheatley Trucking, Inc.*, Civil No. J-82-938 (D.C. Md., June 25, 1982).

<sup>10</sup> *I.C.C. v. Bibey Trucking Company*, Civil No. 82-135 (D.MD., June 1, 1982).

<sup>11</sup> *U.S. v. Ernest L. Curley and Henry P. Zaleski*, Criminal No. 82-00096 (M.D.PA., September 7 and September 22, 1982).



In a significant action, the U.S. Court of Appeals for the Fifth Circuit held that the ICC had authority to seek to enjoin a carrier to pay its owner-operators within 15 days of submission of the necessary documentation,<sup>12</sup> reversing a District Court's dismissal of an injunctive action brought by the Commission.

Through both administrative and judicial actions, the Commission has been successful in recovering a substantial amount of fuel reimbursement money for a number of owner-operators.

### **Injunctions and Contempt Actions**

Injunctions were obtained by the Commission in Federal courts for various violations. A permanent injunction was entered against Acme Fast Freight, Inc. of New York City requiring

the carrier to comply with the claims-handling regulations and to identify all outstanding overcharge and duplicate payments claims covering the period from 1979 to April 21, 1982, and to make appropriate restitution.<sup>13</sup>

The president and treasurer of Diamond State Truck Brokers, Inc. were found in civil contempt for violating an earlier ICC consent injunction. Each was fined one thousand dollars. The company was found in criminal contempt and was fined \$23,000.<sup>14</sup>

On January 22, 1982, a civil contempt petition was filed against two former officers of North Brook Farm Lines, a sham agricultural cooperative, that was named in a 1977 permanent injunction against unauthorized transportation activities. The two were ordered to pay \$5,200 each in civil penalties to the ICC for their contempt of the injunction.<sup>15</sup>

<sup>12</sup> *I.C.C. v. Brannon Systems, Inc.*, No. 8-3413 (5th Cir., September 20, 1982).

<sup>13</sup> *I.C.C. v. Acme Fast Freight, Inc.* Civil No. 82 Civ 96 (S.D.N.Y., April 21, 1982).

<sup>14</sup> *U.S. v. Diamond State Truck Brokers, Inc., et. al.* Civil No. 79-309 (D.D.E., July 8, 1982).

<sup>15</sup> *I.C.C. v. Harvey V. Houser and Harvey Phil Houser*, Civil No. ST-C-77-10 (W.D.N.C., April 1, 1982).

## COURT ACTIONS

ICC decisions interpreting and implementing provisions of the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980 continued to be the focus of litigation during fiscal year 1982. These landmark statutes, along with subsequent Commission decisions and litigation, will have a significant impact on the Nation's railroads, motor carriers, and the public they serve.

During the year, the ICC's Office of the General Counsel handled 806 cases in Federal courts. At the beginning of the fiscal year, 480 cases were pending; 326 additional cases were instituted during the year. As of September 30, 1982, the courts had concluded 330 cases; 476 were in various stages in litigation. Of the cases concluded, 12 were by the Supreme Court, 310 by the Federal courts of appeals, and eight by Federal district courts.

During fiscal year 1982, several courts interpreted provisions of the Staggers Act. In an important case,<sup>1</sup> the Commission's rules implementing the inflation cost recovery provision were affirmed by the United States Court of Appeals for the District of Columbia Circuit. Section 203 of the Act requires the Commission to publish an index of costs by which railroads can multiply their rates on a quarterly basis, such rate increases are immune from challenge as unreasonably high. The Commission adopted a modified version of the Association of American Railroads' index of rail costs. Shippers argued that the Commission was required to adjust that index for produc-

tivity, but the court disagreed and affirmed the Commission's initial decision not to do so. The Commission has since instituted a proceeding to consider the productivity issue.<sup>2</sup>

The United States Court of Appeals for the Seventh Circuit affirmed the Commission's first effort to apply a provision of Section 214 of the Staggers Act that deprives state regulatory agencies of jurisdiction over general rate increases.<sup>3</sup> Before the Staggers Act was enacted, the Public Service Commission of Indiana had blocked application of interstate general increases to Indiana coal traffic in several cases. After passage of the Staggers Act, railroads operating in Indiana sought to reinstate the full general increases in coal, but were again blocked by the state. The cases then went to the Commission, which found that the state agency no longer had jurisdiction because the rates were in substance general increases, even though they only applied to one commodity. The court agreed with the Commission, holding that "only the state agency holddown has given these filings their apparent specificity," and that this interpretation was necessary to advance the statute's purpose of removing the disparity between interstate and intrastate rail rates.

The Chicago and North Western case was the first judicial consideration of a forced sale of an abandoned rail line under the Staggers Act amendments to the Interstate Commerce Act.<sup>4</sup> This revision requires a railroad to

<sup>2</sup> Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures—Productivity Adjustment*.

<sup>3</sup> *Indianapolis Power and Light Company, et. al. v. I.C.C.*, 687 F.2d 1008 (7th Cir. 1982).

<sup>4</sup> *Chicago & North Western Transportation Company v. United States*, 678 F.2d 665 (7th Cir. 1982).

<sup>1</sup> *Western Coal Traffic League v. United States*, 677 F.2d 915 (D.C. Cir. 1982).

sell an abandoned line to financially responsible bidders. In this case, the Commission authorized the railroad to abandon a line, and then set a purchase price for the line so that a consortium of towns located on the line could buy it. The court upheld the Commission's determination that the fair market value of abandoned rail lines is the net liquidation value. The court also found that even though it was not clear whether the action here would be a "taking" within the meaning of the Fifth Amendment of the Constitution, the payment set would be "just compensation."

Another case involving the Iowa Power and Light Company resulted in a judicial interpretation of Section 208 of the Staggers Act, which governs contract rates.<sup>5</sup> In a pre-Act investigation, the Commission found that a rate exceeding a contract rate for movement of coal to an electric utility was unreasonably high. The Commission prescribed the contract rate as the maximum reasonable rate. After the Staggers Act, the railroad filed a rate higher than the prescribed rate, arguing that the prescription was no longer valid because it was below the authorized jurisdictional threshold and because the courts have exclusive jurisdiction to enforce rate agreements.

The Commission argued that the market dominance threshold does not apply to rates that are based on pre-Staggers Act rate agreements due to the "grandfather clause" in the Interstate Commerce Act. However, the court held that the Commission can not enforce a contract between a shipper

and a carrier, and that all contract rate disputes arising after October 1, 1980, must be aired exclusively in court. The court also held that the jurisdictional threshold would be applicable despite the prior rate prescription.

In another case the United States Court of Appeals for the District of Columbia affirmed the Commission's interpretation of the joint rate cancellation provisions added by Section 217 of the Act.<sup>6</sup> The Commission had decided not to suspend or investigate a joint rate cancellation filed by Family Lines Rail System. Southern Railway had argued that Section 10705a required the Commission to suspend a cancellation if the canceled rates produced a revenue to variable cost ratio of 110 percent or more. The Commission disagreed, finding that a carrier could choose to proceed under either Section 10705a or Section 10705. Because the Commission found that Family Lines had elected to use Section 10705, it concluded that suspension and investigation were matters committed to the agency's discretion. The court agreed with the Commission, holding that the agency is not required to investigate a cancellation brought under Section 10705.

The United States Court of Appeals for the District of Columbia Circuit also upheld the Commission's interpretation of the minimum rate standards established by the Railroad Revitalization and Regulatory Reform Act of 1976 and the Staggers Act.<sup>7</sup> The Commission ruled that rates exceeding "directly variable costs" (i.e. exceeding costs that vary directly with the level of transportation service pro-

<sup>5</sup> *Burlington Northern Railroad Company v. I.C.C.*, 679 F.2d 934 (D.C. Cir. 1982).

<sup>6</sup> *Southern Railway Company v. I.C.C.*, 681 F.2d 29 (D.C. Cir. 1982).

<sup>7</sup> *Water Transport Association v. I.C.C.*, 684 F.2d 81 (D.C. Cir. 1982).

vided under the rate) will be conclusively presumed to be reasonable. The Water Transport Association argued that the rules did not give adequate consideration to Section 707 of the Staggers Act, which states with respect to the relationship between water and rail carriers that the Staggers Act does not make lawful any practice which is unfair, destructive, predatory or otherwise undermines competition. The court agreed with the Commission's reading of the statute and held that a rate which contributes to "going concern value" by exceeding directly variable costs cannot be unfair, destructive, or predatory simply because of its level, but could be unlawful for other reasons, such as violation of the antitrust laws.

In another case involving interpretation of a Staggers Act provision, the United States Court of Appeals for the Eighth Circuit enjoined the Illinois Central Gulf Railroad from implementing a branch line surcharge on a line it was seeking to abandon.<sup>8</sup> The court had previously remanded the Commission's decision granting the abandonment, and that decision still was pending as the fiscal year ended.

The Commission refused to suspend and investigate the surcharge, but the court found on review that the filing of the surcharge could result in circumvention of the remand order. The court also was troubled by the fact that the Commission had not formulated its final rules for computing branch line costs. The Commission filed a petition for writ of certiorari arguing that the court of appeals impinged on the Commission's jurisdiction over rate suspension matters.<sup>9</sup>

Although the Staggers Act changed the Interstate Commerce Act's discrimination provisions as they apply to most situations, discrimination among ports was specifically excluded from those changes. Thus pre-Staggers Act port discrimination cases have continuing importance. The United States Court of Appeals for the Fifth Circuit affirmed one of these key decisions.<sup>10</sup> Common control is an essential element in a discrimination case because a carrier does not violate the statute unless it is responsible for the treatment accorded to both the preferred and the prejudiced ports. However, until the line of cases challenged here, the Commission had presumed that railroads, acting in concert through rail rate bureaus, exercised "network common control" in all cases. In the cases challenged, the Commission rejected the network common control theory, and required a showing that a particular railroad actually controls the rates to both of the compared ports. The court held that this new policy was a matter within the Commission's discretion and had been adequately explained.

Another important decision by the United States Court of Appeals for the District of Columbia Circuit held the agency's approval of construction by Chicago and North Western Transportation Company (CNW) of a railroad line giving it access to Wyoming's Powder River Basin coal reserves.<sup>11</sup> This line would give CNW a connection to a joint CNW-Burlington Northern line that the Commission authorized in 1976.<sup>12</sup>

<sup>10</sup> *Nueces County Navigation District v. United States*, 674 F.2d 1055 (5th Cir. 1982).

<sup>11</sup> *Mobil Oil Corporation v. I.C.C.*, 685 F.2d 624 (D.C. Cir. 1982).

<sup>12</sup> *Burlington Northern, Inc.—Construction and Oper.*, 348 I.C.C. 388 (1976).

<sup>8</sup> *I.C.C. v. City of Cherokee*, 671 F.2d 1080 (8th Cir. 1982).

<sup>9</sup> *I.C.C. v. Cherokee*, No. 82-163.

Mobil Oil Corporation argued that the Commission failed to consider the benefits of additional competition when it decided not to require joint service over a segment of BN's lines north of the joint line. The court agreed with the Commission that the railroads have no affirmative duty to agree to serve jointly the entire Powder River Basin.

The United States Court of Appeals for the Eighth Circuit affirmed a Commission decision allowing Burlington Northern Inc., a non-carrier holding company, to acquire the assets of Burlington Northern Railroad, which is made up of several separately incorporated rail and motor carriers.<sup>13</sup> The Commission held that no application under 49 U.S.C. 11343(a)(4) was necessary for this acquisition because of the "single system doctrine." The court affirmed this long-standing case law interpretation of the statute that acquisition of control of at least two carriers by a person that is not a carrier is not subject to Commission jurisdiction when the carriers are part of a single established system.

The Commission participated in a case before the Supreme Court involving a court of appeal's power to revive an outdated rate prescription.<sup>14</sup> The Commission, in successive decisions, set maximum reasonable rates on a railroad coal movement to the City of San Antonio of \$11 in 1976, \$16 in 1978, and \$17 in 1979. The court of appeals vacated and remanded the 1978 and 1979 San Antonio decisions as inadequately explained and purported to reinstate the first prescription.<sup>15</sup> The

Commission argued that the appellate court's action established a rate level that the Commission had found to be unsupported by current cost data or current legal standards. The ICC further argued that this was an impermissible judicial intrusion into the agency's exclusive jurisdiction to prescribe rates under the Interstate Commerce Act. The case was pending before the Court as the fiscal year drew to a close.

The courts also handed down several important decisions concerning implementation and interpretation of the Motor Carrier Act of 1980. In December 1980, the Commission issued procedural rules and policy guidelines encouraging new applicants to apply for broader authority than had traditionally been authorized and for existing authority holders to seek removal of restrictions from previously issued narrow authorities. Several court cases involve these Commission guidelines.

In one, a court invalidated the agency's use of generic commodity classes for both new applications for operation authority and for restriction removal.<sup>16</sup> The court also stated that no authority should be granted unless a carrier demonstrates that it is fit, willing, and able to handle all commodities in the category sought. But the court approved the choice of a county as the appropriate geographic minimum. The American Trucking Associations did not believe that the agency's actions following this decision were in compliance with the court's mandate and requested the court to issue a writ of mandamus. The Commission opposed

<sup>13</sup> *Brotherhood of Railway & Airline Clerks v. Burlington Northern*, 671 F.2d 1085 (8th Cir. 1982).

<sup>14</sup> *Burlington Northern, Inc., et al. v. United States of America, et al.*, No. 81-1008.

<sup>15</sup> *Burlington Northern, Inc., et al. v. United States of America*, 655 F.2d 1341 (D.C. Cir. 1980).

<sup>16</sup> *American Trucking Associations, Inc. v. I.C.C.*, 659 F.2d 452 (5th Cir. 1981).



the mandamus and requested that the court clarify its decision to provide needed guidance. On February 25, 1982, the court entered a mandamus decision and attempted to clarify its mandate.<sup>17</sup> The mandamus order subsequently was stayed by Supreme Court Justice Byron White.

In two cases the courts found that the "fit, willing, and able" requirement should be imposed in restriction removal cases as well as in applications for new authority.<sup>18, 19</sup>

The Commission filed petitions for writs of certiorari in the Supreme Court in the three above cases.<sup>20, 21, 22</sup> In the first case, the Commission argued that the lower court intruded unlawfully into the agency's discretion to interpret and to implement the Motor Carrier Act. The Commission also argued that the mandamus order was improper because the court admitted that it was uncertain whether the agency acted in violation of its mandate. The Commission contended that it cannot be found to have knowingly violated a mandate when the court's decision was unclear and the agency attempted in good faith to comply. In the Steere and Ritter cases, the Commission argued that the court erred by engrafting statutory provisions concerning grants of new authority (specifically, the "fit, willing, and able" standard) on the agency's exercise of the restriction removal provisions of the statute.

The United States Court of Appeals for the Eleventh Circuit affirmed a grant of nationwide authority to transport food based on (1) the support of one shipper (which operates 135 plants nationwide) and (2) a compilation of 150 existing certificates already issued to the carrier.<sup>23</sup> The court rejected the petitioner's argument that it was unfairly surprised by the Commission's reliance on the certificates, and held that the applicant was not required to demonstrate a need for service at every point requested, but only at a representative number of points.

The Eleventh Circuit also affirmed the Commission's implementation of a Motor Carrier Act provision concerning intercorporate hauling.<sup>24</sup> The new provision exempts compensated transportation provided by one member of a corporate family for another member if the affiliates are wholly owned by the parent.

The Commission's imposition of certain securities conditions upon Greyhound Corporation was reversed by the United States Court of Appeals for the D.C. Circuit.<sup>25</sup> Greyhound Corporation, the parent holding company of Greyhound Lines, was ordered by the Commission to seek regulatory approval before issuing securities which could significantly affect the carrier. Greyhound Lines also was prohibited from paying its parent dividends of more than 70 percent of its income. The court reversed both of these restrictions and remanded the case with instructions to release Greyhound from securities regulation. The court

<sup>17</sup> 669 F.2d 957.

<sup>18</sup> *Steere Tank Lines v. I.C.C.*, 666 F.2d 255 (5th Cir. 1982).

<sup>19</sup> *Ritter Transportation, Inc. v. I.C.C.*, 684 F.2d 86 (D.C. Cir. 1982).

<sup>20</sup> *I.C.C. v. American Trucking Associations, Inc. et al.*, No. 82-86.

<sup>21</sup> *I.C.C. v. Steere Tank Lines, Inc., et al.*, No. 82-41.

<sup>22</sup> *I.C.C. v. Ritter Transportation, Inc.*, No. 82-594.

<sup>23</sup> *Refrigerated Transport Co., Inc. v. I.C.C.*, 673 F.2d 1196 (11th Cir. 1981).

<sup>24</sup> *American Trucking Associations, Inc. v. I.C.C.*, 672 F.2d 850 (5th Cir. 1982).

<sup>25</sup> *Greyhound Corporation v. I.C.C.*, 668 F.2d 1345 (D.C. Cir. 1981).

found that the agency had been inconsistent in its choice of a test for deciding which carrier holding companies should be subjected to its jurisdiction because the Commission had used a "substantial effect on transportation" test in this case and a "principal source of revenues" test in other cases during the same period.

The United States Court of Appeals for the Fifth Circuit affirmed the Commission's new tariff rules making improperly symbolized tariff changes unlawful.<sup>26</sup> This procedure is designed to insure compliance with tariff symbolization requirements now that the Commission no longer examines tariff

filings prior to their effectiveness. The rules also allow shippers to file overcharge claims based on the differences between the unlawful tariff and the prior rate. The court found that the rules which allow rates which have already gone into effect to be rejected are a proper use of the Commission's authority to reject tariffs.

By contrast, the United States Court of Appeals for the Eleventh Circuit reviewed and reversed the Commission's Tariff Integrity Board rules, holding that the agency could not reject effective tariffs under the informal board procedures.<sup>27</sup>

<sup>26</sup> *Aberdeen & Rockfish Railroad Company, et. al. v. United States*, 682 F.2d 1092 (5th Cir. 1982).

<sup>27</sup> *Southern Motor Carriers Rate Conference, Inc. v. United States*, 676 F.2d 1374 (11th Cir. 1982).

## FINANCIAL OVERSIGHT

The Commission's financial oversight activities include accounting, auditing, financial analysis, cost analysis, cost development and reporting. These functions involve preparing, amending and interpreting prescribed accounting and financial reporting rules, examining and analyzing accounts and financial statements, and compiling and publishing transportation statistics and cost studies.

### Accounting and Reporting Rulemakings

The Commission's prescribed accounting and reporting systems are continually reviewed with the objective of providing current useful information. This program includes modernizing the systems to keep pace with generally accepted accounting principals (GAAP) and to reduce reporting requirements in order to decrease the reporting burden of carriers and retain only that data which is needed by the Commission.

In developing amendments to these systems, the rulemaking process allows interested parties to participate in formulating the rules. During fiscal 1982, the Commission adopted the following changes:

- A final rule established guidelines for accumulating, recording and reporting the costs of repairing freight cars to assure more accuracy and uniformity of repair cost information by car types.<sup>1</sup>
- A final rule required motor carriers of property and passengers to write

off intangible assets, including the cost of operating authorities issued by the Commission, in accordance with Financial Accounting Standards Board Statement (FAS) No. 44 and Accounting Principles Board Opinion No. 17 in order to align ICC regulations with GAAP.<sup>2</sup>

- A final rule required all carriers subject to the Commission's uniform systems of accounts to disclose project financing arrangements and other unconditional purchase obligations, as well as future payments on long-term borrowing and redeemable stock, in accordance with FAS No. 47 in order to align ICC regulations with GAAP.<sup>3</sup>
- A final rule eliminated the Commission's accounting and reporting requirements for Class II railroad companies.<sup>4</sup> Cost savings to the industry are estimated to be \$140,000.
- A final rule eliminated Form QFR-S filed by over 1,900 Class I and II contract motor carriers and Class II common carriers (except those subject to Instruction 27 of 49 CFR 1207.)<sup>5</sup> Cost savings to the industry are estimated to be \$280,000.
- A final rule established guidelines for carriers to follow when accounting for business entertainment expenses to enable carriers to properly classify those expenses as operating or nonoperating expenses. This rule was required to im-

<sup>1</sup> Finance Docket No. 37080, *Accounting and Reporting of Railroads' Freight Train Car Repair Costs* (not printed), decided November 18, 1981.

<sup>2</sup> Finance Docket No. 37337, *Accounting for Intangible Assets of Motor Carriers* (not printed), decided November 27, 1981.

<sup>3</sup> Finance Docket No. 38709, *Disclosure of Long-Term Obligations* (not printed), decided January 19, 1982.

<sup>4</sup> Finance Docket No. 37614, *Elimination of Accounting and Reporting Requirements of Class II Railroads*, (not printed), decided February 8, 1982.

<sup>5</sup> Finance Docket No. 38760, *Elimination of Form QFR-S* (not printed), decided February 8, 1982.

plement provisions of the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980.<sup>6</sup>

- A final rule revised Annual Report Form R-1 to align the reporting requirements for Class I railroad companies with the Commission's present information needs.<sup>7</sup> Cost savings to the industry are estimated to be \$220,000.
- A final rule revised Annual Report Form M filed by Class I and II motor carriers of property to reduce it so that carriers would need to report only the information that the Commission uses regularly and frequently.<sup>8</sup> Cost savings to the industry are estimated to be \$220,000.
- A final rule required all carriers subject to the Commission's uniform system of accounts to classify their deferred income taxes as current or noncurrent in accordance with FAS No. 37 in order to align ICC regulations with GAAP.<sup>9</sup>
- A final rule eliminated accounting and reporting requirements for rate bureaus.<sup>10</sup> Cost savings to the industry are estimated to be \$20,000.
- A final rule adopted a methodology for indexing motor carrier revenues in order to eliminate the effects of in-

flation from the classification process so that carriers will be classified based on real business expansion rather than on inflated dollars.<sup>11</sup>

- A final rule revised Annual Report Form MP-1 filed by motor carriers of passengers to eliminate data reporting requirements that produce information no longer used regularly or frequently by the Commission.<sup>12</sup>

Total cost savings to the affected industries from these reductions is estimated to be about \$900,000.

## Cost and Financial Analysis

During fiscal year 1982, the Commission analyzed the cost and financial evidence submitted in connection with requests for general rate increases for motor carriers. These analyses included evaluations of proposed rate increases based on cost of service considerations and assessments of the revenue needed to provide the carriers with a fair and reasonable return on invested capital. The Commission also evaluated the cost and financial evidence submitted by railroads and others in connection with rates charged for the transportation of coal and other bulk commodities. The Commission also conducted a study which determined that the railroad industry's current cost of capital, or fair rate of return, for comparison with returns on net transportation investment, was 16.5 percent.<sup>13</sup>

<sup>6</sup> Finance Docket No. 37465, *Business Entertainment Expenses* (not printed), decided February 22, 1982.

<sup>7</sup> Finance Docket No. 38590, *Revision in Railroad Annual Report Form R-1* (not printed), decided February 25, 1982.

<sup>8</sup> Finance Docket No. 38568, *Revision to Annual Motor Carrier Reporting Requirement* (not printed), decided February 26, 1982.

<sup>9</sup> Finance Docket No. 38685, *Financial Statement Classification of Deferred Income Taxes* (not printed), decided March 16, 1982.

<sup>10</sup> Finance Docket No. 38847, *Elimination of Accounting and Reporting Requirements for Rate Bureaus* (not printed), decided August 12, 1982.

<sup>11</sup> Finance Docket No. 38377, *Indexing the Annual Operating Revenues of Motor Carriers of Property* (not printed), decided September 28, 1982.

<sup>12</sup> Finance Docket No. 38857, *Revisions to Annual Motor Carriers of Passengers Reporting Requirements* (not printed), decided September 28, 1982.

<sup>13</sup> Ex Parte No. 415, *Railroad Cost of Capital-1981*, decided June 11, 1982.

During fiscal year 1982, the Commission refined its procedures for determining the opportunity cost associated with railroad abandonments. For the first time, a specific rate of return figure (16.7 percent) was published for use by carriers and shippers in assessing the opportunity costs of abandoning rail service.<sup>14</sup>

The financial condition of large carriers was also monitored by the Commission in order to determine their financial ability to provide adequate service to shippers. Updated analyses to the current cash position and estimated cash needs of the Kansas City Terminal Railway Company, the Commission's directed service carrier over the Chicago, Rock Island and Pacific Railroad (Rock Island), were regularly submitted to Congress. Quarterly reports were publicly released which show the latest quarterly and 12 month period earnings and traffic volume data of Class I railroads, the 100 largest trucking companies, the 15 largest household goods carriers and the ten largest bus companies. Only two Federal loan guarantees to railroads are outstanding. The Department of Justice has settled most of the remaining loan guarantees to railroads that defaulted.

## Cost Development

The redesign of the computer system for the new Uniform Rail Costing System (URCS) was completed during fiscal year 1982. The revised system is expected to be released early in fiscal year 1983. After completion

of a series of national seminars acquainting industry with the system the Commission ruled that it will seek public comment relative to the implementation of URCS through a rulemaking proceeding.<sup>15</sup>

During fiscal year 1982, the Commission completed a review and analysis of evidence on issues relating to its Motor Carrier Platform Study and adopted a national weight formula.<sup>16</sup> This decision resolved one of the most controversial disputes in the motor common carrier costing area by adopting a more rational and accurate method of allocating platform service expenses, resulting in refined unit costs by weight category.

In response to the Congressional directives in the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982, the Commission developed and instituted procedures allowing for the recovery of estimated or foreseeable future costs in general increase proceedings filed by motor rate bureaus of each transportation mode under their respective filing requirements.<sup>17</sup>

During fiscal year 1982, the Commission made substantial progress toward evaluating the theory underlying the Association of American Railroads' rail cost recovery index and

<sup>14</sup> Ex Parte No. 274 (Sub-No. 3A), *Abandonment of Railroad Lines—Use of Opportunity Cost*, decided August 3, 1982.

<sup>15</sup> Ex Parte No. 431, *Implementation of the Uniform Rail Costing System*, decided August 17, 1982.

<sup>16</sup> Ex Parte No. MC-129, *1977-1978 Platform Study of Class I and Class II Motor Common Carriers of General Freight Subject to Accounting Instruction 27*, 132 M.C.C. 851 (1982).

<sup>17</sup> Ex Parte No. MC-82, *Provisions for Foreseeable Future Costs and Requirements for Additional Data (Motor Carriers of Property)*, decided December 21, 1981; and Ex Parte No. MC-82 (Sub-No. 1), *Provision for Foreseeable Future Costs (Motor Carriers of Passengers)*, Notice of Proposed Rulemaking, decided September 10, 1982.



adopting a variable cost recovery index to support rail cost increases as promulgated in the Staggers Rail Act of 1980.<sup>18</sup>

The Commission ordered the motor carriers of property subject to Accounting Instruction 27 to develop 1982 studies based on prescribed sampling procedures. These studies will enable the ICC to develop and prepare a 1982 cost study applicable to its 12 regions and territories.<sup>19</sup> Pickup and delivery services are being studied for the first time since 1974 in an effort to reflect current operating practices and changes in commercial zones.

The Commission also continued to monitor motor carrier diesel fuel prices throughout the United States and to prepare a weekly summary of price levels and changes in conformance with the requirements associated with the cancellation of the ICC's revenue-based fuel surcharge program.<sup>20</sup>

The Commission completed a review of rail costing standards and established a jurisdictional threshold rail cost recovery percentage (CRP) factor.<sup>21</sup> The 1982 CRP was calculated to be 183.5 percent.

## Directed Service

On September 26, 1979, the Commission concluded that the Rock Island Railroad had exhausted all of its operating funds and directed the Kan-

sas City Terminal Railway Company (KCT) to operate over the entire Rock Island system beginning October 5, 1979. This directed service authority expired on March 23, 1980. This was the first Commission directed service experience involving such a large and complex operation. As of September 30, 1982, \$86.6 million of the total appropriation of \$91.1 million had been disbursed to the KCT. The Commission ordered that all accounting operations be terminated on March 31, 1983.<sup>22</sup>

Subsequent to the termination of directed service on March 23, 1980, the Commission, with advice from the Department of Transportation, authorized 22 railroads to operate certain Rock Island line segments without government funding. The railroads provided service on a voluntary basis so that a substantial portion of Rock Island service could be continued. A number of railroads expressed an interest in purchasing lines of the Rock Island they were operating. The ICC also authorized the state of South Dakota and three railroads to rehabilitate certain segments of trackage. Federal subsidy totaled approximately \$5.4 million, of which \$2.4 million was disbursed to South Dakota and three million dollars to the three railroads.

## Auditing

Commission auditors performed the following oversight functions in fiscal year 1982:

- Performed audits at various railroads in order to verify the input source data these railroads provided

<sup>18</sup> Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, decided October 22, 1982.

<sup>19</sup> Finance Docket No. 38744, *1982 Cost Study of Class I and Class II Motor Common Carriers of General Freight Subject to Accounting Instruction 27, Sub No. 's 1 through 12*, decided February 17, 1982.

<sup>20</sup> Ex Parte No. 311 (Sub-No. 4), *Modification of the Motor Carrier Fuel Surcharge Program* (not printed), decided October 5, 1981.

<sup>21</sup> Ex Parte No. 399, *Cost Recovery Percentage (CRP)*.

<sup>22</sup> Directed Service Order No. 1398, *Termination of Claims Settlement Operations* (not printed), issued December 2, 1981.

to the Association of American Railroads for its computation of a rail recovery cost index.

- Examined the accounting records of directed service operations and claims for reimbursement.
- Implemented electronic data processing audit techniques for monitoring railroad cost data.
- Investigated transactions between railroads and affiliated companies.
- Investigated violations by carriers of Commission regulations and referred major violations to appropriate government enforcement agencies; obtained evidence which resulted in convictions of carrier officials for fraud.
- Evaluated the Southeastern Pennsylvania Transportation Authority's (SEPTA) commuter rail system operations and assisted SEPTA in its attempt to reduce operating costs.

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## APPENDIX A

### Commission Organization

The major bureaus and offices of the Commission are listed below. Heads of each bureau or office report to the Chairman via the channels indicated on the organization chart.

#### STAFF OFFICIALS

Office of the Chairman	
<i>Chief of Staff</i>	Robert G. Shepherd, Jr.
Office of Public Affairs	
<i>Director</i>	Robert R. Dahlgren
Office of Governmental Affairs:	
<i>Director</i>	Bruce N. Hatton
Office of Legislative Counsel	
<i>Legislative Counsel</i>	Janice M. Rosenak
Small Business Assistance Office	
<i>Director</i>	Dan G. King
Office of the Managing Director:	
<i>Managing Director</i>	William R. Johnson
<i>Assistant Managing Director</i>	John C. Surina
<i>Director, Personnel Office</i>	Richard H. Mooers
<i>Chief, Budget and Fiscal Office</i>	Mary G. Hoya
<i>Chief, Administrative Services</i>	Virgil L. Schultz
<i>Chief, Systems Development</i>	Edward F. Welkener
Office of the Secretary	
<i>Secretary</i>	Agatha L. Mergenovich
<i>Assistant Secretary</i>	James H. Bayne
Office of the General Counsel	
<i>General Counsel</i>	John H. Broadley
<i>Deputy General Counsel</i>	Robert S. Burk
<i>Associate General Counsel</i>	Kathleen M. Dollar
<i>Associate General Counsel</i>	Henri F. Rush
<i>Associate General Counsel</i>	Ellen D. Hanson
Office of Proceedings	
<i>Director</i>	Heber P. Hardy
<i>Associate Director</i>	Richard S. Lewis
<i>Deputy Director, Section of Railroads</i>	Louis E. Gitomer
<i>Deputy Director, Section of Motor Carriers</i>	Howell Sporn



## STAFF OFFICIALS—Continued

## Office of Transportation Analysis:

*Director*

William R. Southard

*Associate Director*

Richard H. Klem

*Chief, Section of Rail Services Planning*

Michael E. Sullivan

*Chief, Section of Energy and Environment*

Carl P. Bausch

*Chief, Section of Research and Analysis*

Leland L. Gardner

## Office of Hearings:

*Chief Administrative Law Judge*

David H. Allard

*Assistant Chief Administrative Law Judge*

James E. Hopkins

*Assistant Chief Administrative Law Judge*

Nolin J. Bilodeau

## Office of Special Counsel:

*Special Counsel*

Edward J. Schack

*Deputy Special Counsel*

Clarke W. Brinckerhoff

## Bureau of Accounts:

*Director*

Ronald S. Young

*Deputy Director*

William F. Moss III

## Office of Compliance and Consumer Assistance:

*Director*

J. Warren MacFarland

*Associate Director*

Bernard Gaillard

*Deputy Director, Section of Operations*

John H. O'Brien

*Deputy Director, Section of Enforcement*

Charles E. Wagner

## Bureau of Traffic:

*Director*

Martin E. Foley

*Assistant Director*

Neil S. Llewellyn

## DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS

### Region I

<b>Regional Headquarters</b>	Robert L. Abare, Regional Director, 150 Causeway Street, Room 501, Boston, MA 02114
Connecticut	135 High Street, Hartford, CT 06103
Maine	76 Pearl Street, Room 303, Portland, ME 04101
Massachusetts	New Federal & Courthouse Building, Main & Bridge Streets, Springfield, MA 01103
New Hampshire	James C. Cleveland Federal Building, 55 Pleasant Street, Room 314, Concord, NH 03301
New Jersey	744 Broad Street, Room 552, Newark, NJ 07102
New York	910 Federal Building, 111 West Huron Street, Buffalo, NY 14202
Rhode Island	Leont K. Javits Federal Building, 26 Federal Plaza, Room 1807, New York, NY 10278
Providence, R.I.	John F. Fogarty Federal Building, 24 Weybossett Street, Room 102, Providence, RI 02903
Vermont	117 State Street, Room 303, Montpelier, VT 05602 Mailing Address: P.O. Box 548

### Region II

<b>Regional Headquarters</b>	M. Faith Angell, Regional Director, Federal Reserve Bank Building, 101 North 7th Street, Room 620, Philadelphia, PA 19106
Delaware	See nearest ICC Field Office in New Jersey, Maryland or Pennsylvania
Maryland	125 Federal Building, Charles Center, 31 Hopkins Plaza, Baltimore, MD 21201
Ohio	1601 Superior Avenue, Room 210, Cleveland, OH 44114
Philadelphia, Pa.	Federal Reserve Bank Building, 101 North 7th Street, Room 620, Philadelphia, PA 19106
Pittsburgh, Pa.	Frederick Union Tower Building, 4th Floor, 960 Pennsylvania Avenue, Room 405, Pittsburgh, PA 15222

## DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS—Continued

Virginia 10-502 Federal Building, 400 North 8th Street,  
Richmond, VA 23240

West Virginia 416 Old Post Office Building, 12th and Chapline  
Sts., Wheeling, WV 26003

### Region III

**Regional Headquarters** . . . Benjamin R. McKenzie, Regional Director,  
1776 Peachtree Street, NW, Room 300,  
Atlanta, GA 30309

Alabama 2121 Building, Suite 1616, 2121 8th Avenue  
North, Birmingham AL 35203

Florida 288 Federal Building, 400 West Bay Street,  
Box No. 35008 Jacksonville, FL 32202

Monterey Building, Suite 101, 8410 NW 53rd  
Terrace, Miami, FL 33166

Georgia 1776 Peachtree Street, NW, Room 300,  
Atlanta, GA 30309

Kentucky 426 U.S. Post Office, 601 West Broadway,  
Louisville, KY 40202

Mississippi Federal Building, Suite 1441, 100 West Capitol  
Street, Jackson, MS 39269

North Carolina Room CC-516 Mart Office Building, 800 Briar  
Creek Road, Charlotte, NC 28205

South Carolina State-Thurmond Federal Building, 1835  
Assembly Street, Suite 866, Columbia, SC  
29203

Tennessee Room 211 Federal Office Building, 167 North  
2nd Street, Memphis, TN 38103

U.S. Courthouse Building, 801 Broadway, A422, Nash-  
ville, TN 37203

### Region IV

**Regional Headquarters** Alfred L. Rathert, Regional Director, Everett  
McKinley Dinkins Building, Room 1304, 219  
South Dearborn Street, Chicago, IL 60604

Illinois Everett McKinley Dinkins Building, Room 1304,  
219 South Dearborn Street, Chicago, IL  
60604

Indiana	429 Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204
Michigan	01 Corr Building, 300 East Michigan, Lansing, MI 48933
Minnesota	414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401
North Dakota	268 Federal Building and U.S. Post Office, 675 2nd Avenue North, Fargo, ND 58102
South Dakota	Room 322, Federal Building, Pierre, SD 57501
Wisconsin	U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202

## Region V

<b>Regional Headquarters</b>	Jack K. Huff, Regional Director, 411 West 7th Street, Suite 600, Fort Worth, TX 76102
Arkansas	3108 Federal Building, Little Rock, AR 72201
Iowa	518 Federal Building, 210 Walnut Street, Des Moines, IA 50309
Kansas	101 Litwin Building, 110 N. Market, Wichita, KS 67202
Louisiana	T 9038 Federal Building, U.S. Post Office, 701 Loyola Avenue, New Orleans, LA 70113
Missouri	600 Federal Building, 811 Walnut Street, Kansas City, MO 64106 210 North 12 Street, Room 1465, St. Louis, MO 63101
Nebraska	Room 903, Federal Office Building, 106 South 15th Street, Omaha, NE 68102
Oklahoma	240 Old U.S. Post Office and Courthouse, 215 Northwest 3rd Street, Oklahoma City, OK 73102
Texas	411 West 7th Street, Suite 601, Fort Worth, TX 76102 19210 Federal Building and U.S. Courthouse, 515 Rusk Avenue, Houston, TX 77002

## DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS—Continued

### Region VI

<b>Regional Headquarters</b>	Arthur E. Bacon, Regional Director, Suite 501, 211 Main Street, San Francisco, CA 94105
Alaska	Federal Building and U.S. Courthouse, 701 C Street, Box 7, Anchorage, AK 99513
Arizona	2020 Federal Building, 230 North 1st Avenue Phoenix, AZ 85025
California	1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012  211 Main Street, Suite 501, San Francisco, CA 94105
Colorado	492 U.S. Customs House, 721-19th Street, Denver, CO 80202
Idaho	1471 Shoreline Drive, Room 110, Boise, ID 83702
Montana	Room 222, U.S. Post Office Building, 2602 First Avenue North, Billings, MT 59101
Nevada	107 Federal Building, 705 North Plaza Street, Carson City, NV 89701
New Mexico	1106 Federal Office Building, 517 G. Ild Avenue SW, Albuquerque, NM 87101
Oregon	Crown Plaza, Suite 250, 1500 SW First Street, Portland, OR 97201
Utah	503 U.S. Post Office and Courthouse, 350 South Main Street, Salt Lake City, UT 84101
Washington	858 Federal Building, 915 2nd Avenue, Seattle, WA 98174
Wyoming	105 Federal Building and U.S. Courthouse, 111 South Wolcott, Casper, WY 82601

## INTERSTATE COMMERCE COMMISSIONERS 1887-1982

<i>Interstate Commerce Commissioners</i>	<i>State</i>	<i>Party</i>	<i>Oath of Office</i>	<i>End of Service</i>
1. COOLEY, Thomas M.	MI	Rep.	Mar. 31, 1887	Jan. 12, 1892
2. MORRISON, William R.	IL	Dem.	Mar. 31, 1887	Dec. 31, 1897
3. SCHOONMAKER, Augustus	NY	Dem.	Mar. 31, 1887	Dec. 31, 1890
4. WALKER, Aldace F.	VT	Rep.	Mar. 31, 1887	Mar. 31, 1889
5. BRAGG, Walter, L.	AL	Dem.	Mar. 31, 1887	Aug. 21, 1891
6. VEAZEY, Wheelock G.	VT	Rep.	Sept. 10, 1889	Dec. 20, 1896
7. KNAPP, Martin A.	NY	Rep.	Mar. 2, 1891	Dec. 12, 1910
8. McDILL, James W.	IA	Rep.	Jan. 13, 1892	Feb. 28, 1894
9. CLEMENTS, Judson C.	GA	Dem.	Mar. 17, 1892	June 18, 1917
10. YEOMANS, James D.	IA	Dem.	May 2, 1894	Mar. 6, 1905
11. PROUTY, Charles A.	VT	Rep.	Dec. 21, 1896	Feb. 2, 1914
12. CALHOUN, William J.	IL	Rep.	Mar. 21, 1898	Sept. 30, 1939
13. FIFER, Joseph W.	IL	Rep.	Nov. 4, 1899	Dec. 30, 1905
14. COCKRELL, Francis M.	MO	Dem.	Mar. 11, 1905	Dec. 31, 1910
15. LANE, Franklin K.	CA	Dem.	July 2, 1906	Mar. 5, 1913
16. CLARK, Edgar E.	IA	Rep.	July 31, 1906	Aug. 13, 1921
17. HARLAN, James S.	IL	Rep.	Aug. 28, 1906	Dec. 31, 1918
18. McCHORD, Charles C.	KY	Dem.	Dec. 31, 1910	Jan. 1, 1926
19. MEYER, Balthasar H.	WI	Rep.	Dec. 31, 1910	Apr. 30, 1939
20. MARBLE, John H.	CA	Dem.	Mar. 10, 1913	Nov. 21, 1913
21. HALL, Henry C.	CO	Dem.	Mar. 21, 1914	Jan. 13, 1928
22. DANIELS, Winthrop M.	NJ	Dem.	Apr. 6, 1914	July 1, 1923
23. AITCHISON, Clyde B.	OR	Rep.	Oct. 5, 1917	July 10, 1952
24. WOOLLEY, Robert W.	VA	Dem.	Oct. 5, 1917	Dec. 31, 1920
25. ANDERSON, George W.	MA	Dem.	Oct. 15, 1917	Nov. 5, 1918
26. EASTMAN, Joseph B.	MA	Ind.	Feb. 17, 1919	Mar. 15, 1944
27. FORD, Henry J. <sup>1</sup>	NJ	Dem.	June 11, 1920	Mar. 4, 1921
28. POTTER, Mark W.	NY	Dem.	June 24, 1920	Feb. 20, 1925
29. ESCH, John J.	WI	Rep.	Mar. 28, 1921	May 29, 1928
30. CAMPBELL, Johnston B.	WA	Rep.	May 5, 1921	Jan. 6, 1930

<sup>1</sup> Recess appointment only, not confirmed.



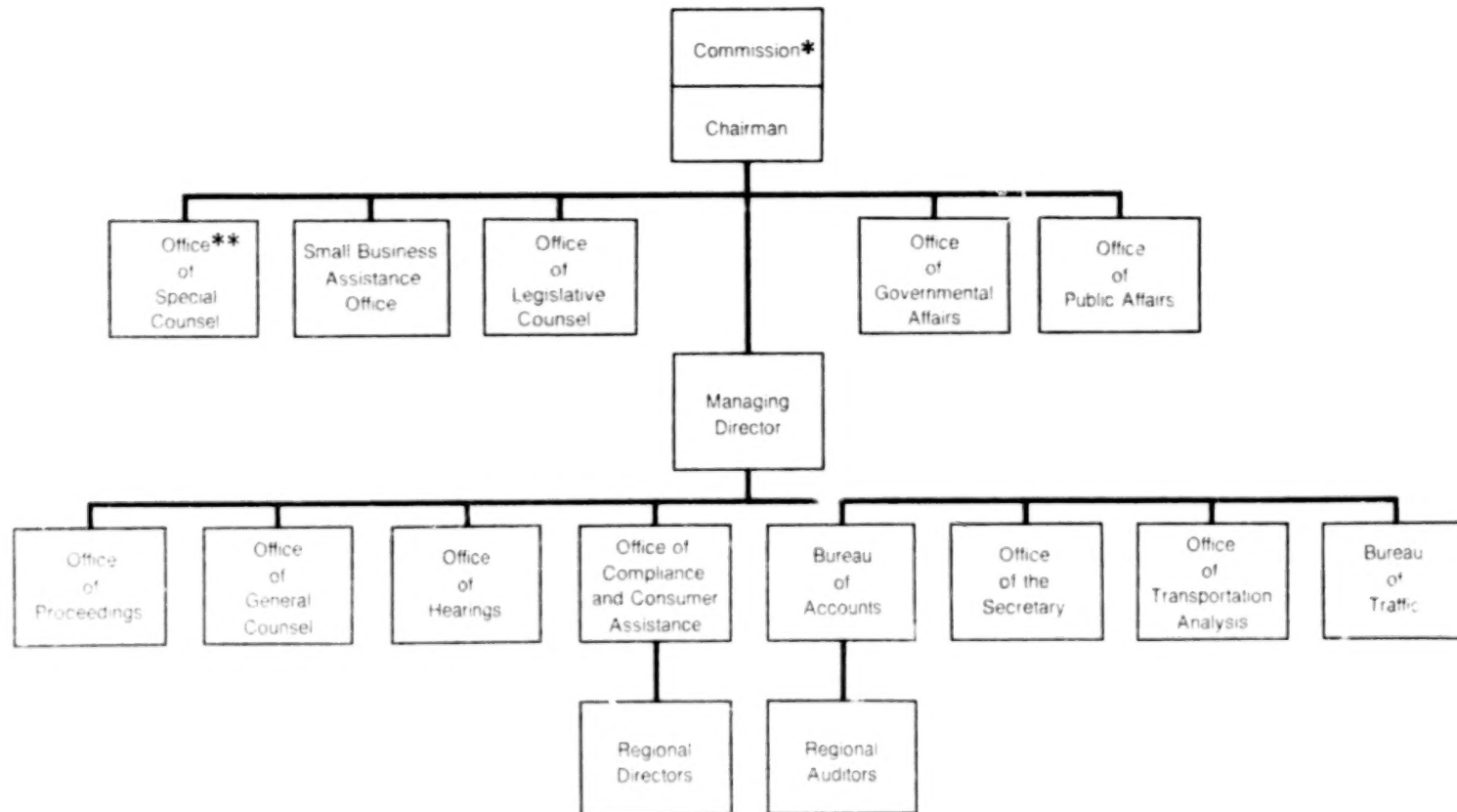
<i>Interstate Commerce Commissioners</i>	<i>State</i>	<i>Party</i>	<i>Oath of Office</i>	<i>End of Service</i>
31. LEWIS, Ernest I.	IN	Rep.	May 5, 1921	Dec. 31, 1932
32. COX, Frederick I.	NJ	Rep.	Sept. 1, 1921	Dec. 31, 1926
33. McMANAMY, Frank	D.C.	Dem.	June 28, 1923	Apr. 30, 1939
34. WOODLOCK, Thomas F.	NY	Dem.	Apr. 1, 1925	Aug. 31, 1930
35. TAYLOR, Richard V.	AL	Dem.	Jan. 16, 1926	Dec. 31, 1929
36. BRAINERD, Ezra, Jr.	OK	Rep.	Feb. 23, 1927	Dec. 31, 1933
37. PORTER, Claude R.	IA	Dem.	Jan. 28, 1928	Aug. 17, 1946
38. FARRELL, Patrick J.	D.C.	Dem.	June 7, 1928	Dec. 31, 1934
39. LEE, William E.	ID	Rep.	Jan. 18, 1930	Aug. 18, 1953
40. TATE, Hugh M.	TN	Rep.	Feb. 28, 1930	Sept. 16, 1937
41. MAHAFFIE, Charles D.	D.C.	Dem.	Sept. 2, 1930	Dec. 31, 1954
42. MILLER, Carroll	PA	Dem.	June 14, 1933	Dec. 24, 1949
43. SPLAWN, Walter M. W.	TX	Dem.	Feb. 1, 1934	June 30, 1953
44. CASKIE, Marion M.	AL	Dem.	Aug. 26, 1935	Mar. 31, 1940
45. ROGERS, John L.	TN	Rep.	Sept. 16, 1937	Apr. 30, 1952
46. ALLDREDGE, J. Haden	AL	Dem.	May 1, 1939	Oct. 31, 1955
47. PATTERSON, William J.	ND	Ind.	July 31, 1939	July 10, 1953
48. JOHNSON, J. Monroe	SC	Dem.	June 3, 1940	June 4, 1956
49. BARNARD, George M.	IN	Rep.	Dec. 2, 1944	Jan. 2, 1949
50. MITCHELL, Richard F.	IA	Dem.	Feb. 3, 1947	June 15, 1959
51. CROSS, Hugh W.	IL	Rep.	Apr. 11, 1949	Nov. 25, 1955
52. KNUDSON, James K.	UT	Rep.	Apr. 20, 1950	May 22, 1954
53. ELLIOTT, Kelso	IN	Rep.	July 10, 1952	Feb. 29, 1956
54. ARPAIA, Anthony F.	CT	Dem.	July 11, 1952	Mar. 15, 1960
55. CLARKE, Owen	WA	Rep.	July 10, 1953	Jan. 15, 1958
56. FREAS, Howard G.	CA	Rep.	Aug. 18, 1953	Dec. 31, 1966
57. TUGGLE, Kenneth H.	KY	Rep.	Sept. 8, 1953	July 31, 1975
58. WINCHELL, John H.	CO	Rep.	July 28, 1954	Apr. 3, 1961
59. HUTCHINSON, Everett	TX	Dem.	Feb. 1, 1955	Mar. 31, 1965
60. MURPHY, Rupert L.	GA	Dem.	Dec. 30, 1955	Aug. 31, 1978
61. MINOR, Robert W.	OH	Rep.	Feb. 15, 1956	Sept. 30, 1958
62. WALRATH, Laurence K.	FL	Dem.	Mar. 29, 1956	June 30, 1972
63. McPHERSON, Donald P., Jr.	PA	Rep.	June 4, 1956	Mar. 29, 1963
64. GOFF, Abe McGregor	ID	Rep.	Feb. 12, 1958	July 30, 1967
65. WEBB, Charles A.	VA	Rep.	Sept. 30, 1958	Mar. 31, 1967
66. HERRING, Clyde E.	IA	Dem.	Sept. 21, 1959	May 25, 1964
67. BUSH, John W.	OH	Dem.	Apr. 3, 1961	Nov. 2, 1972
68. TUCKER, William H.	MA	Dem.	Apr. 3, 1961	Dec. 31, 1967
69. TIERNEY, Paul J.	MD	Rep.	Mar. 29, 1963	Feb. 28, 1970
70. BROWN, Virginia Mae	WV	Dem.	May 25, 1964	July 23, 1979
71. DEASON, Willard	TX	Dem.	Sept. 8, 1965	July 31, 1975
72. STAFFORD, George M.	KS	Rep.	Apr. 26, 1967	Aug. 31, 1980
73. SYPHERS, Grant E.	CA	Rep.	July 31, 1967	Feb. 5, 1968
74. HARDIN, Dale W.	IL	Rep.	July 31, 1967	Aug. 31, 1977

<i>Interstate Commerce Commissioners</i>	<i>State</i>	<i>Party</i>	<i>Oath of Office</i>	<i>End of Service</i>
75. BURKE, Wallace R.	CT	Dem.	Aug. 21, 1968	June 28, 1969
76. JACKSON, Donald L.	CA	Rep.	Mar. 20, 1969	June 30, 1972
77. GRESHAM, Robert C.	MD	Rep.	Dec. 15, 1969	June 18, 1982
78. BREWER, W. Donald	CO	Rep.	July 23, 1970	June 30, 1974
79. WIGGIN, Chester M. Jr.	NH	Rep.	Oct. 24, 1972	July 31, 1973
80. McFARLAND, Alfred T.	TN	Ind.	Nov. 1, 1972	Nov. 10, 1977
81. MONTEJANO, Rodolfo <sup>1</sup>	CA	Dem.	Nov. 3, 1972	Mar. 2, 1973
82. O'NEAL, A. Daniel Jr.	WA	Dem.	Apr. 12, 1973	Dec. 31, 1979
83. CLAPP, Charles L.	MA	Rep.	Mar. 14, 1974	March 19, 1982
84. CORBER, Robert J.	VA	Rep.	Mar. 13, 1975	Dec. 1, 1976
85. CHRISTIAN, Betty Jo	TX	Dem.	Apr. 7, 1976	Dec. 31, 1979
86. TRANTUM, Thomas A.	CT	Rep.	July 23, 1979	July 31, 1981
87. GASKINS, Darius W.	DC	Dem.	July 23, 1979	Feb. 1, 1981
88. ALEXIS, Marcus	IL	Dem.	Aug. 27, 1979	June 30, 1981
89. GILLIAM, Reginald E.	VA	Dem.	Apr. 21, 1980	Feb. 1, 1983
90. TAYLOR, Reese H. Jr.*	NV	Rep.	June 25, 1981	
91. STERRETT, Malcolm M. B.*	MD	Rep.	Feb. 12, 1982	
92. ANDRE, Frederic N.*	IN	Rep.	Mar. 13, 1982	
93. SIMMONS, J. J. III*	OK	Dem.	Apr. 27, 1982	
94. GRADISON, Heather J.*	OH	Rep.	June 18, 1982	

\*Commissioners who are still serving.

<sup>1</sup> Recess appointment only, not confirmed.

## INTERSTATE COMMERCE COMMISSION



October 1982

\*In deciding most proceedings, the Commission is divided into two divisions of general jurisdiction, each comprised of three Commissioners. Rule-making and significant adjudications are decided by the entire Commission.

\*\*Subject to administrative supervision of the Chairman, but in all other respects is accountable to Commission.

## APPENDIX B

### Commission Workload

TABLE 1.—Distribution by method of disposition of proceedings cases opened and closed during fiscal year 1982

Case type	Finance						Total
	Open-ings	Modi- fied Proce- dure	Unop- posed Grants	Closings			
				Decided by ALJ Decision	Dis- missed/ With- drawn	Other	
Rulemakings	15	3	1	0	0	4	8
Abandonments	386 <sup>1</sup>	20	356	9	16	5	406 <sup>2</sup>
Finance docket ex- cluding motor securities	265	162	66	5	31	4	268
Motor securities	54	45	6	0	7	0	58
Motor carrier finance	229	34	161	5	19	2	221
Directly related motor carrier applications	31	12	24	5	0	4	45
Small carrier transfer	691	3	703	1	15	52	774
Other	2 <sup>4</sup>	0	0	0	1	0	1
TOTAL	1673	279	1317	25	89	71	1781

Case type	Open-ings	Modi- fied Proce- dure	Rates				Total
			Unop- posed Grants	Closings			
				Decided by ALJ Decision	Dis- missed/ With- drawn	Other	
Rulemakings	252	19	48	0	0	11	78
Investigation and Suspension	2	2	0	0	0	0	2
Investigation and suspension (motor)	28	54	0	0	1	5	60
Rail investigation without suspension	4	2	0	0	2	4	8
Other rail formal docket	97	49	0	10	424 <sup>1</sup>	24	507
Formal docket (motor)	57	7	0	4	14	12	37
Other	8	2	0	0	1	2	5
TOTAL	448	135	48	14	442	58	697

<sup>1</sup>Includes 170 CONRAIL

<sup>2</sup>Includes 190 CONRAIL

<sup>3</sup>Includes 2 NCR

<sup>4</sup>192 Funds were made pursuant to the Staggers Act

TABLE 1.—Distribution by method of disposition of proceedings cases opened and closed during fiscal year 1982—Continued

Case type	Open-ings	Modi- fied Proce- dure	Unop- posed Grants	Operating Rights Closings			Total
				Decided by ALJ Decision	Dis- missed/ With- drawn	Other	
Rulemakings	7	0	0	0	0	9	9
Motor carrier operating rights	13103	4124	10863	9	550	7	15553
Motor carrier complaints	14	0	0	0	0	13	13
Motor carrier operating rights	26	5	11	0	0	6	22
Freight forwarder operating rights	95	36	52	0	20	0	108
Other <sup>1</sup>	25	9	10	0	1	0	20
<b>TOTAL</b>	<b>13270</b>	<b>4174</b>	<b>10936</b>	<b>9</b>	<b>571</b>	<b>35</b>	<b>15725</b>

<sup>1</sup> Continuing control proceedings for new carriers.

TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1982

#### RULES AFFECTING THE BROAD RANGE OF TRANSPORTATION

(\* indicates action completed)

No. 37130 (Sub No. 1)*	Special Docket Proceedings—Waiver of Insignificant Amount and Simplification of Procedures
Ex Parte No. 263 (Sub No. 3)*	Electronic Transmission of Loss and Damage Claims
Ex Parte No. 372*	Notice to Shippers of Freight Refused or Unclaimed at Destination
Ex Parte No. 406	Electronic Transmission of Freight Bills

#### RAILROADS

Ex Parte No. 137	Contracts for Protective Services
Ex Parte No. 230 (Sub No. 6)	Improvement of TOFC/COFC Regulation (Railroads Affiliated Motor Carriers and other Motor Carriers)
Ex Parte No. 290 (Sub No. 2)*	Railroad Cost Recovery Procedures
Ex Parte No. 290 (Sub No. 4)	Railroad Cost Recovery Procedures—Productivity Adjustment
Ex Parte No. 322 (Sub No. 1)	Revised Procedures for Divisions of Revenue Cases
Ex Parte No. 334 (Sub No. 5)	Zone of Reasonableness for Car Hire Charges
Ex Parte No. 346 (Sub No. 3)	Rail General Exemption Authority—Long and Short Haul Transportation
Ex Parte No. 346 (Sub No. 7)	Railroad Exemption—Export Coal

**RAILROADS—Continued**

Ex Parte No. 346 (Sub No. 8)	Exemption from Regulation Box Car Traffic
Ex Parte No. 346 (Sub No. 9)*	Conrail Petition to Exempt Iron Chloride from Edge Moor, DE to Baltimore, MD
Ex Parte No. 346 (Sub No. 9A)	Liquid Iron Chloride
Ex Parte No. 346 (Sub No. 10)	Rail General Exemption Authority—Hops, 365 I.C.C. 701
Ex Parte No. 346 (Sub No. 12)	Petition to Exempt Storage Leases of Norfolk and Western 1982
Ex Parte No. 346 (Sub No. 13)	Sou Line Railroad Company Petition for Exemption from the Provisions of 49 U.S.C. 10726—Long and Short Haul Transportation
Ex Parte No. 347 (Sub No. 1)	Coal Rate Guidelines—Nationwide
Ex Parte No. 387	Railroad Transportation Contracts
Ex Parte No. 388	State Intrastate Rail Rate Authority, 365 I.C.C. 700
Ex Parte No. 389	Procedures for Requiring Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge or Cancellation
Ex Parte No. 399	Cost Recovery Percentage
Ex Parte No. 402*	Reasonably Expected Costs, 367 I.C.C. 819
Ex Parte No. 409*	Rail Carrier Informational State Tariff Filing, 365 I.C.C. 362
Ex Parte No. 411	Complaints Filed Under Staggers Rail Act of 1980
Ex Parte No. 415*	Railroad Cost Capital—1981, 365 I.C.C. 734
Ex Parte No. 427*	Joint Rates Study—Report to Congress
Ex Parte No. 435	Modify Rules Governing Tariff Amendments
Ex Parte No. 436	Railroad Cost of Capital—1982
Ex Parte No. 274 (Sub No. 3A)*	Abandonments, Use of Opportunity Costs, 365 I.C.C. 902 (1982)
Ex Parte No. 274 (Sub No. 5)*	Revision of Abandonment Regulations (not printed), decided September 28, 1982
Ex Parte No. 274 (Sub No. 8)	Exemption of Out of Service Rail Lines
Ex Parte No. 282 (Sub No. 3)*	Railroad Consolidation Procedures, 366 I.C.C. 75 (1982)
Ex Parte No. 282 (Sub No. 5)*	Traffic Protective Conditions in Railroad Consolidation Proceedings, 366 I.C.C. 112 (1982)
Ex Parte No. 332*	Procedures For Certificate to Construct, Acquire or Operate A Rail Line, 365 I.C.C. 516 (1982)
Ex Parte No. 395	Feeder Railroad Development Program
Ex Parte No. 419*	Conrail Abandonments Under Northeast Rail Service Act of 1981, 365 I.C.C. 472 (1981)



TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1982—Continued

**RAILROADS—Continued**

Ex Parte No. 428	Discontinuance or Change of Passenger Train or Ferry Service
Ex Parte No. 430*	Elimination of Finance Board and Transfer of its Remaining Functions (not printed), decided September 30, 1982
Ex Parte No. 432	Reorganizations of Rail and Motor Carriers
Ex Parte No. 433*	Deletion of General Requirements 49 CFR 1110 (not printed), decided May 28, 1982

**TRUCK AND BUS COMPANIES**

No. 29937	Reliance Group Holdings, Inc., Petition for Declaratory Order, 366 I.C.C. 460
No. 36135	Rules Governing Publication of Exceptions Ratings Higher than Classification Rating
No. 38728	Petition for Declaratory Order—Lawfulness of Volume Discount Rates by Motor Common Carriers of Property, 365 I.C.C. 711
No. 38749	UTF Carriers, Inc.—Petition for Exemption from Tariff Filing Requirement Under 49 U.S.C. 10761(b)
MC-C-10799	Transportation of Hazardous Wastes, 47 FR 29402
Ex Parte No. 55 (Sub-No. 43C)	Revision of Application Procedures—Substitution of Motor for Abandoned Rail Service, 365 I.C.C. 365
Ex Parte No. 55 (Sub-No. 43D)	Certification of Canadian or Mexican Ownership or Control of Applications for Motor Common or Contract Carrier Authority
Ex Parte No. 55 (Sub-No. 56)	Applications for Operating Authority—Motor Passenger Carriers
Ex Parte No. 111 (Sub-No. 1)	Transfer of Operating Rights
Ex Parte No. 230 (Sub-No. 6)	Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)
Ex Parte No. 263 (Sub-No. 3)	Electronic Transmission of Loss and Damage Claims and Freight Bills, 365 I.C.C. 581
Ex Parte No. 297	Rate Bureau Investigation (Shipper-Affiliation), 365 I.C.C. 351
Ex Parte No. 297 (Sub-No. 5)	Motor Carrier Rate Bureaus—Implementation of P.L. 96-296
Ex Parte No. 297 (Sub-No. 6)	Bus Rate Bureau Procedures
Ex Parte No. 311 (Sub-No. 4)	Modification of Motor Carrier Fuel Surcharge Program, 365 I.C.C. 311

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**TRUCK AND BUS COMPANIES—Continued**


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Ex Parte No. 354	Additional Charges of Motor Carriers and Freight Forwarders
Ex Parte No. 400 (Sub-No. 1)	Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343
Ex Parte No. MC-1	Payments of Rates and Charges of Motor Carriers
Ex Parte No. MC-5 (Sub-No. 4)	Passenger Broker Surety Bonds or Insurance
Ex Parte No. MC-37 (Sub-No. 33)	The Port of Bremerton Commercial Zone
Ex Parte No. MC-37 (Sub-No. 35)	Washington, D.C. Commercial Zone
Ex Parte No. MC-42	Handling of C.O.D. Shipments
Ex Parte No. MC-43 (Sub-No. 7A)	Lease and Interchange of Vehicles (Leases Involving Carrier Agents), 132 M.C.C. 822
Ex Parte No. MC-43 (Sub-No. 10)	Payment of Detention Charges
Ex Parte No. MC-43 (Sub-No. 11)	Leases and Interchange of Vehicles
Ex Parte No. MC-43 (Sub-No. 12)	Private Carrier Leasing, 46 FR 15300
Ex Parte No. MC-43 (Sub-No. 13)	Lease and Interchange of Vehicles (Rules Modification), 46 FR 49151
Ex Parte No. MC-58 (Sub-No. 1)	Rules Governing the Designation of Process Agents by Motor Carriers and Brokers
Ex Parte No. MC-64 (Sub-No. 2A)	Special Temporary Authority Procedures
Ex Parte No. MC-65 (Sub-No. 6)	Petition to Expand Passenger Motor Carrier Superhighway and Deviation Rules
Ex Parte No. MC-67 (Sub-No. 6)	Elimination of Notification of Emergency Temporary Authority Applications
Ex Parte No. MC-67 (Sub-No. 8)	Rules Governing Temporary Authority and Emergency Temporary Authority Applications
Ex Parte No. MC-73 (Sub-No. 1)	Interchange Policies at International Boundaries
Ex Parte No. MC-77 (Sub-No. 3)	Elimination of Certificates as a Measure of "Holding Out"
Ex Parte No. MC-79 (Sub-No. 1)	Control of Duplicate Operating Rights, 127 M.C.C. 780
Ex Parte No. MC-82	Provisions for Foreseeable Future Costs and Requirements for Additional Data, 365 I.C.C. 410
Ex Parte No. MC-82 (Sub-No. 1)	Provisions for Foreseeable Costs
Ex Parte No. MC-82 (Sub-No. 4)	New Provisions in Motor Carrier Revenue Proceedings
Ex Parte No. MC-88	Detention of Motor Vehicles—Nationwide
Ex Parte No. MC-88 (Sub-No. 1)	Detention of Motor Vehicles—Alaska
Ex Parte No. MC-95 (Sub-No. 1)	Practices of Motor Common Carriers of Passengers—Checked Baggage Prohibitions and Liability Exemptions, 365 I.C.C. 719

TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1982—Continued

**TRUCK AND BUS COMPANIES—Continued**

Ex Parte No. MC-95 (Sub-No. 3)	Regulations Governing the Adequacy of Intercity Motor Common Carrier Passenger Service
Ex Parte No. MC-98 (Sub-No. 1)	Investigation of Motor Carrier Classification System
Ex Parte No. MC-122 (Sub-No. 2)	Lease of Equipment and Drivers to Private Carriers, 132 M.C.C. 351
Ex Parte No. MC-122 (Sub-No. 3)	Interpretation—Intercompany Hauling, 132 M.C.C. 736
Ex Parte No. MC-122 (Sub-No. 4)	Intercompany Hauling—Interpretation
Ex Parte No. MC-123	Policy Statement Concerning Disposition of Temporary Authority Decisions
Ex Parte No. MC-125	Fare Flexibility for the Bus Industry
Ex Parte No. MC-128	Revenue Need Standards in Motor Carrier Increase Proceedings
Ex Parte No. MC-129	1977-78 Platform Study of Classes I and II Motor Common Carriers, 132 M.C.C. 851
Ex Parte No. MC-133	Petition for Rulemaking on Entry Flexibility for Regular Route Passenger Carriers
Ex Parte No. MC-141	Policy Statement on Motor Carrier Pooling Applications
Ex Parte No. MC-142 (Sub-No. 2)	Freight Forwarder Restrictions, 132 M.C.C. 832
Ex Parte No. MC-142 (Sub-No. 3)	Removal of Restrictions from Authorities of Motor Carriers of Passengers—Intermediate Points
Ex Parte No. MC-145	Cancellation of Motor Carrier Joint Rates and Through Rates
Ex Parte No. MC-147	Information Required on Receipts and Bills
Ex Parte No. MC-152	Policy Statement Regarding Duplicate Operating Rights, 127 M.C.C. 780
Ex Parte No. MC-156	Applications for Motor Carrier Operating Authority by Railroads and Railroad Affiliates
Ex Parte No. MC-157	Investigation into Canadian Law and Policy Regarding Applications of American Motor Carriers for Canadian Operating Authority
Ex Parte No. MC-158	Rates for a Named Shipper or Receiver
Ex Parte No. MC-160	Procedures for Review of Intrastate Bus Rates
Ex Parte No. MC-161	Preemption of State Regulation of Regular Route Exit—Motor Passenger Carriers
Ex Parte No. MC-162	Procedures for Complaints Against Bus Fares

**TRUCK AND BUS COMPANIES—Continued**

Ex Parte No. MC-163	Procedures for Providing Notice of Specified Applications Through an I.C.C. Register in lieu of Federal Register Notice
Ex Parte No. MC-165	Exemption of Contract Carriers from Tariff Filing
Ex Parte No. 422	Removal of Extraordinary (Financial) Conditions and 49 U.S.C. 11348 Jurisdiction
Ex Parte No. 429	Elimination and Modification of Certain Securities Regulations

**FREIGHT FORWARDERS**

Ex Parte No. 364 (Sub-No. 1)*	Freight Forwarder Contract Rates
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TABLE 3.—Listing of formal significant cases, September 30, 1982

**RATES**

<b>Number</b>	<b>Title/Description</b>	<b>Statutory Deadline</b>
1. Ex Parte No. 73, 143 and MC-1	Regulations for Payment of Rates and charges	None
2. Ex Parte No. MC 88 (Sub-No. 1)	Detention of Motor Vehicles—Nationwide	3/11/84
3. Ex Parte No. MC 98 (Sub-No. 1)	Investigation of Motor Carrier Classification System	None
4. Ex Parte No. MC-145	Cancellation of Motor Carrier Joint Rates and Through Routes	None
5. Ex Parte No. MC-158	Rates for a Named Shipper or Receiver	None
6. Ex Parte No. MC-160	Procedures for Review of Intrastate Bus Fares	None
7. Ex Parte No. MC-162	Procedures for Complaints Against Bus Fares	None
8. Ex Parte No. MC-165	Exemption of Contract Carriers from Tariff Filing Requirements	None
9. Ex Parte No. 297 (Sub-No. 6)	Bus Rate Bureau Procedures	None
10. Ex Parte No. 334 (Sub-No. 5)	Zone of Reasonableness for Car Hire Charges	None
11. Ex Parte No. 346 (Sub-No. 7)	Railroad Exemption—Export Coal	None
12. Ex Parte No. 346 (Sub-No. 8)	Exemption From Regulation—Box Car Traffic	None

TABLE 3.—Listing of formal significant cases, September 30, 1982—Continued

RATES

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
13 Ex Parte No. 347 (Sub-No. 1)	Coal Rate Guidelines—Nationwide	None
14 Ex Parte No. 354	Additional Charges of Motor Carriers and Freight Forwarders	None
15 Ex Parte No. 387	Railroad Transportation Contracts	None
16 Ex Parte No. 387 (Sub-No. 200)	Contract Implementation Date; Retroactivity	None
17 S5R2, S5R3, & S5R6	Western, Eastern and Southern Rate Bureau Agreements	None
18 Ex Parte No. 388	State Intrastate Rail Rate Authority	None

OPERATING RIGHTS

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
1 No. MC-C-10799	Transportation of Hazardous Wastes	None
2 Ex Parte No. MC-43 (Sub-No. 7A)	Lease and Interchange of Vehicles	None
3 Ex Parte No. MC-43 (Sub-No. 12)	Leasing Rules Modifications	None
4 Ex Parte No. MC-43 (Sub-No. 13)	Lease and Interchange of Vehicles (Rules Modifications) [49 CFR Part 1057]	None
5 Ex Parte No. MC-55 (Sub-No. 43D)	Certification of Canadian or Mexican Ownership or Control of Applicants for Motor Common or Contract Carrier Authority	None
6 Ex Parte No. MC-55 (Sub-No. 52)	Special Procedures Governing the Recovery of Expenses by Parties to Commission Adjudicatory Proceedings	None
7 Ex Parte No. MC-55 (Sub-No. 56)	Applications for Operating Authority—Motor Passenger Carriers	None
8 Ex Parte No. MC-64 (Sub-No. 2A)	Special Temporary Authority Procedures	None
9 Ex Parte No. MC-65 (Sub-No. 6)	Petition to Expand Passenger Motor Carrier Superhighway & Deviation Rules	None
10 Ex Parte No. MC-67 (Sub-No. 6)	Elimination of Notification of ETA Applications	None
11 Ex Parte No. MC-67 (Sub-No. 8)	Rules Governing Temporary Authority and Emergency Temporary Authority	None

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### OPERATING RIGHTS

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<b>Number</b>	<b>Title/Description</b>	<b>Statutory Deadline</b>
12. Ex Parte No. MC-73 (Sub-No. 1)	Interchange Policies at International Boundaries	None
13. Ex Parte No. MC-77 (Sub-No. 3)	Elimination of Certificates as a Measure of "Holding Out"	None
14. Ex Parte No. MC-95 (Sub-No. 3)	Regulations Governing the Adequacy of Intercity Motor Common Carrier Passenger Service.	None
15. Ex Parte No. MC-122 (Sub-No. 2)	Lease of Equipment and Drivers to Private Carriers	None
16. Ex Parte No. MC-122 (Sub-No. 3)	Interpretation—Intercompany Hauling	None
17. Ex Parte No. MC-133	Petition for Rulemaking on Entry Flexibility for Regular Route Passenger Carriers (Filed by Trailways)	None
18. Ex Parte No. MC-142 (Sub-No. 3)	Removal of Restrictions from Authorities of Motor Carriers of Passengers—Intermediate Points (49 CFR 1137)	None
19. Ex Parte No. MC-152	Duplicate Operating Rights	None
20. Ex Parte No. MC-156	Applications for Motor Carriers Operating Authority by Railroads and Rail Affiliates	None
21. Ex Parte No. MC-161	Preemption of State Regulation of Regular-Route Exit—Motor Passenger Carriers	None

### FINANCE

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<b>Number</b>	<b>Title/Description</b>	<b>Statutory Deadline</b>
1. Ex Parte No. 55 (Sub-No. 38)	Antitrust and Competition Factors in Motor Carrier Finance Cases	None
2. Ex Parte No. 55 (Sub-No. 53)	Motor Carrier Consolidation Procedures, General Policy Statement	None
3. Ex Parte No. 274 (Sub-No. 5)	Revision of Abandonment Regulations	
4. Ex Parte No. 274 (Sub-No. 8)	Exemption of Out of Service Rail Lines	None
5. Ex Parte No. 230 (Sub-No. 6)	Improvement of TOFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)	
6. Ex Parte No. 282 (Sub-No. 9)	Railroad Consolidation Procedures—Trackage Rights Exemption	None



TABLE 3.—Listing of formal significant cases, September 30, 1982—Continued

## FINANCE

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
7. Ex Parte No. 395 (Sub-No. 1)	Feeder Railroad Development Program	None
8. Ex Parte No. 400 MC-165	Procedures for Handling Exemptions Filed By Motor Carriers of Property Under 49 U.S.C. 11343	None
9. Ex Parte No. 422	Removal of Extraordinary (Financial) Conditions Imposed Upon Carriers and Non-Carrier Holding Companies & Their Motor Carrier Subsidiaries & Removal of Jurisdiction Imposed Under 49 USC 11348	None
10. Ex Parte No. 428	Discontinuance or Charge of Passenger Train or Ferry Service	None
11. Ex Parte No. 429	Elimination and Modification of Certain Securities Regulations	None
12. Ex Parte No. 432	Reorganization of Rail and Motor Carriers	None
13. F.D. No. 28640 (Sub-No. 9)	Grand Truck Corporation—Control—Chicago Milwaukee, St. Paul & Pacific Railroad Company and Amended Plan of Reorganization	None
14. F.D. No. 29066	Chicago & North Western Transportation Company Approval of Terms of Construction Ownership & Operation of a Line of Railroad in Campbell & Converse Counties, Wyoming	None
15. F.D. No. 30,000 et al.	Union Pacific Corp. and Union Pacific Railroad Co.—Control—Missouri Pacific Railroad Co.	None

TABLE 4.—Informal proceedings

	<b>Fiscal Year 1980</b>	<b>Fiscal Year 1981</b>	<b>Fiscal Year 1982</b>
Applications for motor temporary authority			
Filed	16240	14053	6032
Disposed of	13909	15051	6452
Pending at end of year	1824	732	402
Petitions in applications for motor carrier temporary authority			
Filed	1474	974	709
Disposed of	1968	936	729
Pending at end of year	117	155	135
Applications to deviate from regular routes			
Filed	141	18	8
Disposed of	147	15	5
Pending at end of year	21	3	3
Petitions in deviation filings			
Filed	3	0	0
Disposed of	2	0	0
Pending at end of year	1	0	0

TABLE 5.—Certificates issued for abandonment, construction, acquisition and operation of rail lines (these figures reflect abandonment applications filed by bankrupt carriers and Conrail for Fiscal Years 1981 and 1982 under NERSA)

	<b>Fiscal Year 1980</b>		<b>Fiscal Year 1981</b>		<b>Fiscal Year 1982</b>	
	<b>Appli- cations</b>	<b>Miles</b>	<b>Appli- cations</b>	<b>Miles</b>	<b>Appli- cations</b>	<b>Miles</b>
I. Abandonment applications filed	130	4784.56	161	3219.41	382	4820.84
Certificate of abandonment						
Granted	105	2321.46	81	1342.19	381	5150.91
Denied	3	96.55	1	12.20	3	52.26
Dismissed	33	5259.27	11	24.60	39	695.91
Abandonment permitted since effective date of the Act		78896.40		80238.59		83389.50
II. Construction applications filed	3	19.74	13	94.60	2	64.5
Granted	7	.957	1	.82	6	46.64
Denied	1	.75	0	—	0	—
Dismissed	0	—	0	—	0	—
III. Acquisition and operation applications filed	3	46.22	26	497.86	3	108.32
Granted	2	10.84	11	9.46	1	41.7
Denied	0	—	0	—	1	61.1
Dismissed	—	—	2	50.53	0	—

TABLE 6.—Tariff schedules, fiscal year 1982

	<i>Received</i>	<i>Criticized</i>	<i>Rejected</i>
<b>Freight</b>			
Common Carrier Tariffs:			
Rail	72,929	244	353
Motor	673,156	3,912	7,619
Water	10,796	41	73
Freight Forwarder	17,479	128	8
International Ocean-Land Intermodal	60,060	0	814
<b>Total</b>	<b>834,420</b>	<b>4,325</b>	<b>8,867</b>
Contract Carrier Schedules:			
Motor	66,446	183	292
<b>Passenger tariffs:</b>			
Rail	31	1	1
Motor	6,262	41	68
Water	20	0	0
<b>Total Passenger</b>	<b>6,313</b>	<b>42</b>	<b>69</b>
<b>Grand Total</b>	<b>907,179</b>	<b>4,550</b>	<b>9,228</b>

TABLE 7.—Action taken on applications filed under provisions of 49 U.S.C. 10726 (formerly section 4 of the ICA), fiscal year 1982

Applications:		Applications:	
On hand beginning of year	10	Disposed of during year:	
		Granted	51
		Denied	0
Received during year	42	Withdrawn	0
		Dismissed	0
<b>Total</b>	<b>52</b>	<b>Total</b>	<b>51</b>
		Pending at end of year	1

Note. Petitions for reconsideration of Board's action—0; applications processed against granting of relief—0; relief withheld pending hearings in applications—0.

TABLE 8.—Released rates board

	<b>Number</b>	<b>Petitions for Admin. Review</b>
<b>FY 1982</b>		
<b>Applications:</b>		
On hand beginning of year	1	0
Received during the year	9	0
<b>Total</b>	10	0
<b>Disposed of during the year:</b>		
Granted	7	0
Denied	1	0
Closed	0	0
Withdrawn	1	0
<b>Total</b>	9	0
Pending at end of year	1	0

TABLE 9.—Action taken on proposals (protested and non-protested) considered for suspension and/or investigation

<b>Suspensions—Fiscal Year 1982</b>						
	<b>Rail</b>	<b>Motor</b>	<b>Water</b>	<b>Fght. Fwdr.</b>	<b>Total No.</b>	<b>Percent</b>
Suspended in full	0	28	0	0	28	7.7
Suspended in part	1	1	0	0	2	0.6
*Not suspended or investigated	53	184	5	0	242	66.1
*Not suspended but investigated	5	1	0	0	6	1.6
#Otherwise disposed of	34	49	4	1	88	24.0
<b>Total</b>	93	263	9	1	366	100.0

\* Permitted to become effective.

# Schedules cancelled or rejected; protests withdrawn or filed too late.

TABLE 10.—Informal rate cases branch (Bureau of Traffic—FY 1982)

<b>Rate Cases General:</b>		
On hand beginning of year		85
Received during year		4643
Disposed of during year		4683
Pending at end of year		45
<b>Informal Complaints:</b>		
On hand beginning of year		119
Received during year		110
Disposed of during year		163
Pending at end of year		66
<b>Decisions—Statement of Claimed Damages (49 CFR 1100.95):</b>		
On hand beginning of year		3
Received during year		4
Disposed of during year		7
Pending at end of year		0
<b>Special Dockets Board:</b>		
On hand beginning of year		166
Received during year		547
Disposed of during year		471
Pending at end of year		242

TABLE 11.—ICC unit of the National Defense Executive Reserve

<b>NDER group</b>	<b>Fiscal Year 1980 On Roll</b>	<b>Fiscal Year 1981 On Roll</b>	<b>Fiscal Year 1982 On Roll</b>
Rail	464	467	483
Motor	104	128	139
Water	32	33	33

TABLE 12.—Car supply—installed, retired, and ordered, class I railroads

	<i>Fiscal Year (Transition Quarter)</i>				
	1967	1972	1976	1977	1982
<b>Cars Installed:</b>					
Box	29,088	15,099	733	5,623	233
Refrigerator	5,312	2,837	29	809	150
Gondolas	7,681	5,809	1,627	4,757	1,179
Hoppers	16,891	12,007	2,609	9,885	3,848
Covered Hoppers	18,890	5,847	1,630	6,803	1,216
Flats	3,267	1,330	362	2,797	464
Others	2,944	50	382	518	59
<b>Total Cars</b>	<b>84,433</b>	<b>42,979</b>	<b>7,372</b>	<b>31,192</b>	<b>7,149</b>
<b>Cars Retired:</b>					
Box	34,428	23,387	6,984	31,240	33,038
Refrigerator	4,262	8,947	* - 245	2,488	3,260
Gondolas	14,827	9,588	786	10,720	7,211
Hoppers	17,819	23,280	1,468	22,151	14,145
Covered Hoppers	1,293	1,621	761	2,855	5,136
Flats	1,236	* - 18,584	* - 1,015	2,997	4,468
Others	2,529	4,295	267	1,422	2,621
<b>Total Cars</b>	<b>76,394</b>	<b>52,534</b>	<b>9,006</b>	<b>73,873</b>	<b>69,879</b>
<b>Cars Ordered:</b>					
Box	11,224	11,011	862	7,588	140
Refrigerators	4,222	3,543	100	713	150
Gondolas	5,701	4,551	1,765	2,873	691
Hoppers	10,567	7,414	2,562	7,224	2,900
Covered Hoppers	12,960	9,177	2,675	5,419	699
Flats	8,316	2,724	155	3,874	358
Others	10,644	4,803	00	500	00
<b>Total Cars</b>	<b>63,634</b>	<b>43,223</b>	<b>8,119</b>	<b>28,191</b>	<b>4,938</b>

\* Negative retirements. Indicates increase in ownership in excess of new installations resulting from reclassification or transfer of equipment, purchase or lease of used equipment, etc.



TABLE 13.—Ownership, serviceable ownership, and turnaround time, class I railroads

	<i>Fiscal Year (Transition Quarter)</i>				
	1967	1972	1976	1977	1982
<b>Ownership:</b>					
Plain Box	444,455	345,718	288,294	262,369	135,424
Equipped Box	131,905	176,473	167,153	167,461	151,965
<b>Total Box</b>	576,360	522,191	455,447	429,830	287,389
Refrigerators	103,347	92,597	75,210	73,531	56,443
Gondolas	204,673	181,758	172,849	166,886	137,079
Hoppers	425,302	379,125	347,615	335,349	297,629
Covered Hoppers	114,999	139,109	157,290	161,238	169,263
Flats	66,333	95,358	98,456	98,256	87,743
Others	59,934	44,920	34,462	33,558	23,460
<b>Total Cars</b>	1,550,948	1,455,058	1,341,329	1,298,648	1,059,006
<b>Serviceable Cars:</b>					
Plain Box	413,690	314,360	250,771	228,937	118,484
Equipped Box	126,910	166,440	147,370	149,167	130,944
<b>Total Box</b>	540,600	480,800	398,141	378,104	249,428
Refrigerators	99,913	88,508	70,366	68,346	50,399
Gondolas	190,373	169,868	155,692	150,969	126,529
Hoppers	407,317	362,324	325,815	314,047	283,141
Covered Hoppers	112,021	133,718	147,071	151,357	157,558
Flats	63,269	90,522	91,495	91,617	82,097
Others	57,772	43,129	32,563	31,833	82,097
<b>Total Cars</b>	1,471,265	1,368,869	1,221,143	1,186,273	971,310
<b>Calendar Year</b>					
	1966	1971	1976	1981	
<b>Turnaround Time—Days:</b>					
Box	19.35	24.01	28.59	37.7	
Refrigerator	39.62	35.46	35.56	41.1	
Gondolas	19.09	20.76	21.68	20.5	
Hoppers	13.88	15.31	14.42	14.4	
Covered Hoppers	20.21	21.98	23.37	31.0	
Flats	12.29	13.78	15.15	17.4	
Average All Cars	17.98	20.14	21.63	24.1	

TABLE 14.—Extension of time limits—Rail proceedings, fiscal year 1982

<b>Proceeding</b>	<b>Type of Proceeding</b>	<b>Notification of Extension</b>	<b>Reason and Duration</b>
No. 37636, <i>Tennessee Authority v. Louisville and Nashville Railroad Company</i>	Complaint	October 13, 1981	Ninety days extension necessary to permit filing of discovery evidence by railroad.
No. 38679, <i>Restructured Rates on Recyclables O/T Iron or Steel Scrap, Conrail</i>	Investigation	October 28, 1981	Ninety day extension necessary because of the complexity and importance of the issues of the extensive cost evidence.
No. 37598, <i>Kaiser Aluminum &amp; Chemical Corporation v. Atchinson Topeka and Santa Fe Railway Company, et al.</i>	Complaint	October 28, 1981	Fifty-one day extension necessary because of difficult discovery, legal and cost issues.
No. 38689, (Sub-No. 1), <i>Restructured Rates on Grain and Grain Products</i>	Investigation	January 11, 1982	Ninety day extension because of the importance and complexity of the issues.
No. 38689 (Sub-No. 1) <i>Restructured Rates on Grain and Grain Products</i>	Investigation	January 11, 1982	Fifty-one day extension necessary because of the importance and complexity of the issues.
I & S No. 9255, <i>Cancellation of Participation in Single-Factor Joint Rates on Grains, Conrail, Oct. 1981</i>	Investigation	March 15, 1982	Thirty day extension necessary to resolve complex and important issues.
No. 38742, <i>Interchange Provisions at Jacksonville, FL, SCL and SRS</i>	Investigation	April 14, 1982	Ninety day extension necessary because of the importance and complexity of the issues.
No. 38772, <i>Unit Train Rates on Coal Thunder Jct., WY, to Mill, TX</i>	Investigation	May 11, 1982	Ninety day extension necessary because of the complexity and importance of the issues and extensive cost evidence.
No. 37625, <i>Westinghouse Electric Corporation v. Atchinson, Topeka &amp; Santa Fe Railway Company, et al.</i>	Complaint	June 1, 1982	Ninety day extension necessary because of the complexity of the issues.
No. 38792, <i>Switching Charges For Privately-Owned Cars Billed To Repair Facilities</i>	Investigation	July 15, 1982	Ninety day extension necessary because parties need additional time to prepare their pleadings.
No. 38799, <i>Light Density Surcharge Brunswick, MO—Omaha, NE Line, N &amp; W</i>	Investigation	July 28, 1982	Ninety day extension necessary because of complex legal and costing issues.
No. 38805, <i>Railroad Cost Recovery Increase on Recyclables (other than iron and steel)</i>	Investigation	August 13, 1982	Ninety day extension necessary because of complexity of issues.

TABLE 15.—Surcharges on joint rates filed under section 10705a, FY 1982

<i>Railroad Group and Type of Surcharge</i>	<i>Surcharges</i>	<i>Negative Surcharges</i>	<i>Net Annual Revenue (000)</i>
Conrail:			
Commodity	17	—	\$ 3,436.4
Light density line	—	—	—
<b>Total</b>	17	—	3,436.4
Class I Carriers Other Than Conrail:			
Commodity	39	14	6,921.7
Light density line	6	—	602.8
<b>Total</b>	45	14	7,524.5
Class II Carriers:			
Commodity	2	—	—
Light density line	1	—	68.0
<b>Total</b>	3	—	68.0
Class III Carriers:			
Commodity	20	1	12.0
Light density line	17	—	330.1
<b>Total</b>	37	1	342.1
<b>Total all Carriers</b>	102	15	\$11,371.0

## APPENDIX C

### PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. Additionally, the Commission issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. For convenience, the GPO stock number has been included. Price information may be obtained by writing to:

Superintendent of Documents  
Government Printing Office  
Washington, D.C. 20402  
Telephone: 202-783-3238

Publications without an asterisk may be obtained free of charge by writing to the ICC office listed after the title.

- Bureau of Accounts (AC)  
Interstate Commerce Commission  
Washington, D.C. 20423
- Office of Compliance and Consumer Assistance (OCCA)  
Interstate Commerce Commission  
Washington, D.C. 20423
- Office of Public Affairs (PA)  
Interstate Commerce Commission  
Washington, D.C. 20423
- Office of the Secretary (SE)  
Publications Room (Rm. B-221)  
Interstate Commerce Commission  
Washington, D.C. 20423
- Office of Transportation Analysis (OTA)  
Interstate Commerce Commission  
Washington, D.C. 20423
- Small Business Assistance Office (SBAO)  
Interstate Commerce Commission  
Washington, D.C. 20423

### ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Bureau of Accounts' Public Reference Room, Room 3378, from 8:30 a.m. to 5:00 p.m. weekdays. Photocopies of these reports, at a cost of 25 cents per page, with a \$2.50 minimum charge per order, can be obtained by writing to the Office of the Secretary, Room 2215, ICC, Washington, D.C. 20423.

### COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to 90 days from the date of service from TS Infosystems, Inc., Room 2227, ICC, Washington, D.C. 20423, or by calling (toll-free) 800-424-5403 or 202-289-4357. Printed reports are also available from the Publications Room until the supply is exhausted.

The Secretary's Office makes available a daily recorded listing of significant Commission decisions. This information may be obtained by calling (toll-free) 800-424-5230 or 202-275-0895.

### CONSUMER PUBLICATIONS

#### *Household Goods Information—OCCA*

This booklet explains consumer rights when moving household goods across state lines. A "moving kit" has been compiled by the ICC which includes this publication and a public advisory on lost or damaged household goods. Summary information from performance reports filed with the ICC by the 20 largest moving companies and a summary of consumer complaints re-

ceived by the Commission about those companies is also included.

#### *Public Advisories*

1 *Owner Operator*—Rights, Responsibilities and Remedies—SBAO

4 *Lost or Damaged Household Goods*—OCCA

8 *Lease—Purchase Plans*—SBAO

#### *Weekly Review—PA*

A comprehensive review of significant ICC actions of particular interest to the consumer. Copies can be obtained on a regular basis by writing the Office of Public Affairs, ICC, Washington, D.C. 20423, Telephone 202-275-7252.

## **GENERAL PUBLICATIONS**

#### *Annual Reports of the Commission to Congress*

90th 1976 (026-000-01041-1)\*

91st 1977 (026-000-01096-9)\*

92nd 1978 (026-000-01135-3)\*

93rd 1979 (026-000-01176-1)\*

94th 1980 (026-000-01195-7)\*

95th 1981 (026-000-01225-2)\*

96th 1982\*

#### *Code of Federal Regulations, Title 49, Revised to October 1982*

Parts 1000-1199: General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures. (022-003-94228-9)\*

Parts 1200-1299: Uniform system of accounts destruction of reports, valuation. (022-033-94229-7)\*

Parts 1300-End: Passenger freight tariffs and schedules, credit regulations. (022-033-94230-1)\*

#### *Interstate Commerce Act*

Public Law 95-473, Revised October 1978. Available from the Government Printing Office in Supplement 2 of the 1976 edition of the U.S. Code, 49 U.S.C. Sec. 10101 et. seq.\*

#### *Interstate Commerce Acts, Annotated*

Volume 21, cumulated index, 1974 (026-000-00970-7)\*

Volume 22, cumulated index, 1977 (026-000-01073-0)\*

#### *Library Bulletin*

Published six times a year, this bulletin provides a listing of the latest speeches by members of the Commission and a directory of legal and transportation articles which are available for review in the Library, Room 3392.

## **INFORMATIONAL PUBLICATIONS**

#### *Can They Do That? Administrative Ruling No. 119—OCCA*

#### *Department of Transportation and State Regulations—Bulletin No. 9—SBAO*

#### *Filing Your Tariff or Schedule—Bulletin No. 8—SBAO*

#### *Government Traffic—Bulletin No. 3—SBAO*

#### *Guide to Applying for Permanent Operating Authority—SBAO June 1982*

#### *Guide to Filing Protests, Replies and Appeals—Bulletin No. 6—SBAO*

#### *Highlights of the Motor Carrier Act of 1980—Bulletin No. 1—SBAO*

**Illegal Lumping—OCCA**

Addresses illegal "lumper" practices.

**Information Bulletin 2—OCCA**

Requirements for engaging in motor carrier operations between points in a foreign country through the United States.

**Loss and Damage Claims! Can You Collect?—OCCA****Notice No. 1—OCCA**

Information on the positions of the ICC and the Federal Courts with respect to certain violations of the Interstate Commerce Act. The notice also has a list of exempt commodities.

**Owner-Operator Food Transportation—Bulletin No. 4—SBAO****Passenger Bus Operations—Bulletin No. 2—SBAO****Restrictions Removal Procedures—Bulletin No. 5—SBAO****Sample Caption Summaries—Bulletin No. 7—SBAO****Self-Help Against Unauthorized Operations—OCCA****Speeches and Statements—PA**

ICC Commissioners' speeches or statements before congressional committees may be obtained on an individual basis from the Office of Public Affairs, Room 1211, ICC, Washington, D.C. 20423. Telephone 202-275-7252.

**State Regulatory Commissions and Fuel Tax Divisions—Bulletin No. 10—SBAO****PERSONNEL****Career Opportunities with the ICC****Opportunity in the Legal Profession with the ICC**

These Publications, and other information on working for the ICC, may be obtained by writing the Office of Personnel, Room 1136, ICC, Washington, D.C. 20423.

**SPECIALIZED PUBLICATIONS****Motor****An Analysis of Rates and Costs in the Motor Carrier Industry—OTA (April 1980)****Case Studies of Small Community General Freight Service—OTA (Semi-monthly)****Cost of Transporting Freight, by Class I and Class II Motor Common Carriers of General Commodities, 197<sup>n</sup>—AC****Consequences of Motor Carrier Deregulation on Fuel Efficiency—OTA**

Thomas Corsi, Asst. Prof., University of Maryland, Merrill Roberts, Prof., University of Maryland (September 28, 1979)

**The Effects of Recession on the Motor Carrier Industry—OTA (June 1981)****The Effect of Regulatory Reform on the Trucking Industry: Structure, Conduct and Performance—Preliminary Report—OTA (June 1981)****Empty/Loaded Truck Miles on Interstate Highways During 1976—OTA (April 1977)**



*An Evaluation of Charges that Regulatory Reform Will Degrade Small Community Motor Carrier Service*—OTA (March 1980)

*Financial and Economic Rate Analysis of the Motor Carrier Industry Volume II*—R.L. Banks & Associates, Inc., October 2, 1979—OTA

*Freight Commodity Statistics, Motor Carriers of Property* (026-000-J114402)\* (1977 Final Publication)

*Highlights of Recent Activity in the Motor Carrier Industry*—OTA (December 4, 1980)

*Highway Form B*—AC

Information for single-line and inter-line shipments, Statement No. 2E1-82

*Some Implications for Motor Carrier Regulatory Reform*—OTA (April 1980)

*The Independent Trucker: A Nationwide Survey of Owner-Operators*—OTA (1978)

*Independent Trucker: Follow-Up Survey of Owner-Operators*—OTA (November 1979)

*Initial Carrier and Shipper Responses to Intrastate Trucking Deregulation in Florida*—OTA (June 1980)

*Initial Paper. Regulatory Reform for the General Commodity Segment of the Motor Carrier Industry*—OTA (January 1980)

*Initial Report of the Motor Carrier Task Force, May 1979*—OTA

Report and recommendations of a staff task force on improving motor carrier regulation

*The ICC and Owner-Operators: The Fuel Surcharge Program*—OTA (April 1982)

*The ICC and Owner-Operators: Leasing Rules and Modifications*—OTA (April 1982)

*Minority Motor Carriers: Status and Prospects*—OTA (March 1982)

*Motor Carrier Computerized Costing Program*—SE

Computerization of the manual method used for determining motor carrier cost for individual freight movements, Statement No. 2E4-79.

*Motor Carrier Monitoring Program: Initial Notes from Carrier Contact and Sources*—OTA (June 1981, November 1981, June 1982)

*Motor Carrier Platform Study*—SE

Determination of the minutes per hundredweight in handling freight across a motor carrier platform. Statement No. 2S1-79 (July 1979)

*The New Region One Motor Carrier—A Descriptive Profile*

Prepared by Region 1 Motor Carrier staff, Boston, MA (June 1981)

*Owner-Operators and the Motor Carrier Act of 1980*—OTA (February 1982)

*Owner-Operators: Single Versus Multiple Unit Fleet Owners*—OTA (June 1982)

*Owner-Operator Turnover between 1977-1980—OTA (June 1982)*

*Potential Benefits of Increased Price Competition in the Motor Carrier Industry—OTA (September 1980)*

*Selected Statistics of Class II Motor Carriers of Property—SE (Calendar 1980)*

*Selected Statistics of Class III Motor Carriers of Property—SE (Calendar 1978)*

*Small Community Service Study, As Mandated by Section 28 of the Motor Carrier Act—OTA (September 1, 1982)*

*Transport Statistics in the U.S. Motor Carriers*  
(First Release, Part 2, 1981)\*

*Uniform State Regulations—Motor Carrier Act of 1980, Section 19, Report to Congress—OTA (December 1982)*

## **Rail**

*Class I Line-Haul Railroads, Selected Earnings Data—SE (Quarterly)*

*Conrail Abandonment Brochure—OTA*

*Contract Advisory Service Summaries of Contracts Filed with the Commission—OTA (Semi-monthly)*

*Exempt Rail Transportation of Fresh Fruits and Vegetables: Initial Impact—OTA*

*Guidelines for Evaluating the Feasibility of Short Line Operations—OTA (August 1982)*

*The Prospect of Reorganizing the Milwaukee Road as a Viable Carrier—OTA*

*Railroad Abandonment Brochure—OTA*

*Railroad Transportation Contracts (ICC rules and procedures) Ex Parte No. 387—OTA (October 1982)*

*Regressions for Railroad Cost Analysis—OTA (August 1977, ECMS-6)*

*Report of Railroad Employment Class I Line-Haul Railroads—SE*  
Statement No. M-350 (Monthly)

*A Study to Perform an In-Depth Analysis of Market Dominance and its Relationship to Other Provisions of the 4-R Act—OTA*

*Transport Statistics in the U.S. Railroads*  
(First Release, 1981, Second Release, 1980)\*

*Wage Statistics of Class I Railroads in the U.S.—SE Statement No. A-300 (Calendar 1981)*

## **General**

The Commission's Bureau of Accounts publishes quarterly reports on selected earnings data: SE

- *Large class I Motor Carriers of Property;*
- *Large Class I Motor Carriers of Passengers; and*
- *Large Class I Household Carriers*

*Early Experience with Airline Deregulation—OTA (April 1980)*

*Financial Management Information Package—SE*

Informs small transportation businesses, especially new trucking firms, on ways to deal more effectively with the business aspects of their operations (1981)

*Report of the Bus Industry Study Group, Interstate Commerce Commission, October 1979—OTA*

*Transport Statistics in the U.S. Freight Forwarders (Calendar 1979) (026-000-01193-1)\**

*Transport Statistics in the U.S. Private Car Lines (Calendar 1979)\**

## APPENDIX D

### Appropriations and Employment

The following statement shows average full time employment and total appropriations for the Fiscal Years 1951 to 1982 for activities included under the current appropriation title "Salaries and Expenses."

Year	Appropriation	Average Employment	Year	Appropriation	Average Employment
1951	\$11,408,200	2,072	1968	23,846,000	1,899
1952	11,264,035	1,890	1969	24,664,000	1,808
1953	11,003,500	1,849	1970	27,742,660	1,802
1954	11,284,000	1,838	1971	28,442,000	1,731
1955	11,679,655	1,859	1972	30,640,000	1,676
1956	12,896,000	1,902	1973	33,720,000	1,765
1957	14,879,696	2,090	1974	40,681,000	1,874
1958	17,412,375	2,238	1975	44,970,000	1,986
1959	18,747,800	2,268	1976	52,455,000	2,034
1960	19,650,000	2,344	TQ	12,290,000	2,113
1961	21,451,500	2,386	1977	60,786,000	2,084
1962	22,075,000	2,400	1978	65,575,000	2,040
1963	23,502,800	2,413	1979	70,400,000	2,040
1964	24,670,000	2,408	1980	79,063,000	1,946
1965	26,715,000	2,339	1981	82,400,000	1,852
1966	27,540,000	2,376	1982	70,150,000	1,540
1967	27,169,000	1,929			

### Fiscal Year 1982 Appropriations

An Act (Public Law 97-102, approved December 23, 1981) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1982, and for other purposes including the following:

**Salaries and Expenses:** For necessary expenses of the Interstate Commerce Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed \$1,500 for official reception and representation expenses, \$70,150,000, provided, that Joint Board members and cooperating state commissioners may use government transportation requests when traveling in connection with their official duties as such.

**Directed Rail Service:** None of the funds provided under this Act shall be available for the execution of programs the obligations for which can reasonably be expected to be in excess of \$10,000,000 for directed rail service under 49 U.S.C. 11125 or any other legislation.

### Urgent Supplemental Appropriation

An Act (Public Law 97-216, approved July 18, 1982) for an additional amount for "Payments for directed rail service", \$8,000,000, to remain available until expended.

## Status of Appropriations

Status of Fiscal year 1982 appropriations as of September 30, 1982:

### Salaries and expenses:

Total Appropriations \$70,150,000

Total Obligations 67,717,995

Unobligated balance

lapsing 2,432,005

### Directed Rail Service:

Unobligated balance

available from prior  
appropriation 539,076

Supplemental Appropriation (PL 97-216) 8,000,000

Recovery of prior  
year obligations 80,847

Transfers from  
other accounts

(PL 96-254) 1,411,403

Total Obligations

(Payments to  
carriers) (5,411,403)

Unobligated balance

available (end of  
year) 4,619,923

## Receipts

Status of receipt accounts as of September 30, 1982:

### Registration and filing

fees \$ 6,035,000

### Fines, penalties &

forfeitures 482,000

### Service charges for

allotments of pay for  
savings account 2,000

### Charges for adminis-

trative services 44,000

### Recoveries from railroad

loan guarantees 59,876,000

### Miscellaneous recov-

eries and refunds 6,000

Total Receipts \$66,445,000

# APPENDIX E

## Carrier Financial and Statistical Data

TABLE 1.—Carriers reporting to the Commission

	<b>Number</b>
Carriers subject to Uniform Systems of Accounts and required to file annual and periodic reports as of September 30, 1982:	
Railroads, class I <sup>1</sup>	39
Motor carriers, class I passenger <sup>2</sup>	76
Motor carriers, class I property <sup>3</sup>	1,144
Motor carriers, class II property <sup>4</sup>	2,139
<b>Total</b>	<b>3,398</b>
Carriers filing annual reports but not subject to prescribed Uniform Systems of Accounts as of September 30, 1982:	
Holding companies (rail)	8
Holding companies (motor)	52
<b>Total</b>	<b>60</b>
Carriers and organizations not subject to filing annual reports as of September 30, 1982:	
Railroads, class II	26
Railroads, class III	271
Railroads switching and terminal companies, class III	142
Railroads lessor companies	85
Stockyard companies	17
Carlines (companies which furnish cars for use on lines of railroads)	152
Classes II and III motor carriers of passengers	1,370
Classes I and II motor carriers of property relieved from reporting requirements of classes I or II	380
Class III motor carriers of property	22,059
Water carriers	265
Maritime carriers	6
Freight forwarders	241
Rate bureaus and organizations	58
Coal slurry pipeline company	1
Protective service companies	7
<b>Total</b>	<b>25,080</b>
<b>Grand Total</b>	<b>28,538</b>

<sup>1</sup> Railroad companies having annual operating revenues of \$50,000,000 or more

<sup>2</sup> Motor carriers having annual operating revenues in excess of \$3,000,000

<sup>3</sup> Motor carriers having annual operating revenues in excess of \$5,000,000

<sup>4</sup> Motor carriers having annual operating revenues less than \$5,000,000 but in excess of \$1,000,000



TABLE 2.—Recapitulation of preliminary 1981 operating revenues, net investment and taxes (dollars in thousands)

<i>Kind of carrier</i>	<i>Number of carriers represented<sup>1</sup></i>	<i>Operating revenues</i>	<i>Net Investment</i>	<i>Income taxes on ordinary income<sup>2</sup></i>
Railroads—class I line haul	38	\$30,733,921	\$35,726,831	\$912,338
Motor carriers of property—class I intercity	740	32,531,459	6,812,418	476,765
Motor carriers of passengers—class I intercity	44	1,444,173	540,743	22,243
<b>Total</b>	<b>822</b>	<b>64,709,553</b>	<b>43,079,992</b>	<b>1,411,346</b>
<b>Percentage distribution</b>				
Railroads—class I line haul	4.6	47.5	82.9	64.6
Motor carriers of property—class I intercity	90.0	50.3	15.8	33.8
Motor carriers of passengers—class I intercity	5.4	2.2	1.3	1.6
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

<sup>1</sup> Carriers for which preliminary financial and statistical data were available<sup>2</sup> Federal income taxes and provisions for deferred taxes only for railroads; all other carriers include Federal and State income taxes, and provision for taxes

TABLE 3.—Class I line-haul railroads shareholders' equity, long term debt and dividends (dollars in thousands)

<i>Item</i>	<i>1979</i>	<i>1980</i>	<i>1981</i>
1. Shareholders' equity:			
a. Capital stock	\$4,452,980	\$4,431,729	\$4,552,703
b. Capital surplus	5,377,850	6,891,779	7,177,334
c. Retained income	8,400,494	8,536,446	9,995,082
d. Total equity	18,231,324	19,859,954	21,725,119
2. Long-term debt	12,454,142	13,229,171	13,055,555
3. Total equity and debt	30,685,466	33,089,125	34,780,674
4. Ratio of debt to equity (percent)	40.59	39.98	37.54
5. Amount of dividends: <sup>1</sup>			
a. Cash	\$584,290	\$616,810	\$714,123
b. Stock	0	0	0

<sup>1</sup> Includes duplications on account of intercorporate payments

TABLE 4.—Class I line-haul railroads, condensed income statement, financial ratios and employee data (dollars in thousands)

Item	1979	1980	1981
1. Number of carriers represented	39	39	38
<b>CONDENSED INCOME STATEMENT</b>			
2. Operating revenues:			
a. Freight	\$23,447,418	\$26,200,348	\$28,766,575
b. Passenger	381,827	438,400	534,227
c. Total operating revenues	25,219,115	28,102,946	30,733,921
3. Total operating expenses	23,994,154	26,249,920	28,475,945
4. Railway tax accruals	2,202,806	2,023,308	2,271,280
5. Net railway operating income	837,232	1,312,398	1,336,240
6. Ordinary income	938,254	1,191,384	2,104,861
7. Extraordinary items—Net <sup>1</sup>	29,216	0	99,640
8. Net income	967,470	1,191,384	2,204,501
<b>NET INVESTMENT AND EQUITY</b>			
9. Net investment in transportation property and equipment plus working capital	30,962,208	34,149,735	35,726,831
10. Shareholders' equity	17,796,132	19,859,954	21,725,119
<b>FINANCIAL RATIOS (PERCENT)</b>			
11. Operating ratio (L. 3 ÷ L. 2c)	95.14	93.41	92.65
12. Return on net investment (L. 5 ÷ L. 9)	2.70	3.85	3.74
13. Return on equity:			
a. Ordinary income basis (L. 6 ÷ L. 10)	5.27	6.00	5.69
b. Net income basis (L. 8 ÷ L. 10)	5.44	6.00	10.15
<b>EMPLOYEE DATA</b>			
14. Average number	482,962	458,996	436,397
15. Compensation:			
a. Total	\$10,903,887	\$11,318,453	\$11,650,806
b. Per hour paid for	9.224	10.214	11.131

<sup>1</sup> Includes income taxes on extraordinary items and discontinued operations and accounting changes.

TABLE 5.—Class I line-haul railroads current assets and current liabilities as of December 31, 1979 and 1980 (dollars in thousands)

Item	1980 amount	Percent of change	1981 amount	Percent of change
Total current assets	\$8,676,400	+ 11.5	\$9,679,830	+ 11.6
Cash and temporary cash investments	1,761,324	+ 22.1	2,720,249	+ 54.4
Materials and supplies	1,766,267	+ 11.4	1,698,999	- 3.8
Total current liabilities	7,778,963	+ 7.7	7,996,670	+ 2.8
Net working capital:				
Including materials and supplies	897,437	+ 61.7	1,683,160	+ 87.6
Excluding materials and supplies	- 868,830	—	- 15,839	—
Ratios:				
Current assets to current liabilities:				
Including materials and supplies	1.12		1.21	
Excluding materials and supplies	.89		1.00	
Cash and temporary cash investments to current liabilities	.23		.34	

TABLE 6.—Class I intercity motor carriers of property condensed income statement, financial ratios, and employee data (dollars in thousands)

Item	1979	1980	1981 <sup>1</sup>
1. Number of carriers represented	872	835	740
<b>CONDENSED INCOME STATEMENT</b>			
2. Operating revenues:			
a. Freight-intercity-common carrier	\$26,637,903	\$26,690,601	\$28,855,955
b. Freight-intercity-contract carrier	938,708	1,139,261	1,052,023
c. Freight-local cartage	337,111	340,034	305,288
d. Intercity transportation for other motor carriers	246,117	186,946	165,109
e. Other operating revenue	1,698,230	1,981,441	2,153,084
f. Total operating revenues	29,858,069	30,338,283	32,531,459
3. Operating expenses	28,788,467	29,012,030	31,241,462
4. Lease of distinct operating unit—net	437	—558	2,201
5. Net carrier operating income	1,070,039	1,325,695	1,292,198
6. Other income and miscellaneous deductions from income—net	—200,071	—277,036	—187,200
7. Income taxes on ordinary income <sup>2</sup>	327,899	407,065	476,765
8. Ordinary income	542,069	641,594	628,233
9. Extraordinary items—net <sup>3</sup>	40,350	—588,265	235,374
10. Net income	582,419	53,329	863,606
<b>NET INVESTMENT AND EQUITY</b>			
11. Net investment in carrier operating property and equipment plus working capital	6,701,090	6,862,267	6,812,418
12. Shareholders' and proprietors' equity	4,971,073	4,606,807	5,004,654
<b>FINANCIAL RATIOS (PERCENT)</b>			
13. Operating ratio (L. 3 — L. 2f)	96.42	95.63	96.03
14. Return on net investment (L. 5 — L. 11)	15.97	19.32	18.97
15. Return on equity (L. 10 — L. 12)	11.72	1.16	17.26
<b>EMPLOYEE DATA</b>			
16. Average number	554,811	471,458	502,990
17. Compensation	\$11,983,623	\$11,459,475	\$12,579,148

<sup>1</sup> Preliminary<sup>2</sup> Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code, also does not include income taxes on extraordinary items. Includes provision for deferred taxes.<sup>3</sup> Includes income taxes on extraordinary items and discontinued operations and accounting changes. For 1980, approximately \$520 million loss is attributed to the write-off of interstate motor carrier operating rights made as a result of passage of The Motor Carrier Act of 1980. Increase in 1981 figures represent the tax effect of the prior year write-off of interstate motor carrier operating rights.

TABLE 7.—Class I intercity motor carriers of passengers condensed income statement, financial ratios, and employee data (dollars in thousands)

item	1979	1980	1981 <sup>1</sup>
1. Number of carriers represented	45	48	44
<b>CONDENSED INCOME STATEMENT</b>			
2. Operating revenues:			
a. Passenger intercity schedules	\$793,614	\$941,290	\$988,837
b. Local and suburban schedules	8,668	10,075	6,464
c. Charter or special service	179,890	199,704	191,458
d. Other operating revenue	218,070	246,309	257,413
e. Total operating revenues	1,200,242	1,397,378	1,444,173
3. Operating expenses	1,143,258	1,318,372	1,373,302
4. Lease of carrier property—net	114	177	14
5. Net carrier operating income	57,098	79,183	70,885
6. Other income and miscellaneous deductions—net	16,029	27,532	14,221
7. Income taxes on ordinary income <sup>2</sup>	16,056	25,111	22,243
8. Ordinary income	57,071	81,604	62,863
9. Extraordinary items—net <sup>3</sup>	0	7,457	-2,505
10. Net income	57,071	89,061	60,358
<b>NET INVESTMENT AND EQUITY</b>			
11. Net investment in carrier operating property and equipment plus working capital	475,332	517,600	540,743
12. Shareholders' and proprietors' equity	572,752	615,759	634,940
<b>FINANCIAL RATIOS (PERCENT)</b>			
13. Operating ratio (L. 3 ÷ L. 2e)	95.25	94.35	95.09
14. Return on net investment (L. 5 ÷ L. 11)	12.01	15.30	13.11
15. Return on equity (L. 10 ÷ L. 12)	9.96	14.46	9.51
<b>EMPLOYEE DATA</b>			
16. Average number	29,723	31,140	30,819
17. Compensation	\$527,588	\$598,537	\$626,648

<sup>1</sup> Preliminary.

<sup>2</sup> Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code, also does not include income taxes on extraordinary items. Includes provision for deferred taxes.

<sup>3</sup> Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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